3 1761 11650497 8

Government
Publications

Government
Publications


Digitized by the Internet Archive
in 2023 with funding from
University of Toronto

https://archive.org/details/31761116504978

CA1 YC 19
-T83

THIRD SESSION—TWENTY-EIGHTH PARLIAMENT

1970-71

THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING SENATE COMMITTEE ON

TRANSPORT AND COMMUNICATIONS

The Honourable HÉDARD J. ROBICHAUD, *Acting Chairman*

LIBRARY
APR 29 1971
UNIVERSITY OF TORONTO

No. 1

THURSDAY, MARCH 11th, 1971

Complete Proceedings on Bill C-186,

intituled:

"An Act to authorize the provision of moneys to meet certain capital expenditures of the Canadian National Railways System and Air Canada for the period from the 1st day of January, 1970, to the 30th day of June, 1971, and to authorize the guarantee by Her Majesty of certain securities to be issued by the Canadian National Railway Company and certain debentures to be issued by Air Canada".

REPORT OF THE COMMITTEE

(For list of witnesses and briefs submitted—see Minutes of Proceedings)

THE STANDING SENATE COMMITTEE ON TRANSPORT AND COMMUNICATIONS

The Honourable J. Campbell Haig, *Chairman*

The Honourable Senators:

Aseltine
Blois
Bourget
Burchill
Connolly (*Halifax-North*)
Denis
*Flynn
Fournier (*Madawaska-Restigouche*)
Haig
Hayden
Hollett
Isnor
Kinley
Kinnear
Langlois
Nichol
O'Leary
Pearson
Petten
Rattenbury
Robichaud
Smith
Sparrow
Welch
Macdonald (*Cape Breton*)
*Martin
McElman
McGrand
Michaud
Molson

Ex officio members: Flynn and Martin

(Quorum 7)

Orders of Reference

Extract from the Minutes of the Proceedings of the Senate, March 4th, 1971:

"Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Cook, seconded by the Honourable Senator Urquhart, for the second reading of the Bill C-186, intituled: "An Act to authorize the provision of moneys to meet certain capital expenditures of the Canadian National Railways System and Air Canada for the period from the 1st day of January, 1970, to the 30th day of June, 1971, and to authorize the guarantee by Her Majesty of certain securities to be issued by the Canadian National Railway Company and certain debentures to be issued by Air Canada"

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Cook moved, seconded by the Honourable Senator Urquhart, that the Bill be referred to the Standing Senate Committee on Transport and Communications.

The question being put on the motion, it was—

Resolved in the affirmative."

Robert Fortier
Clerk of the Senate

Minutes of Proceedings

Thursday, March 11th, 1971.

(1)

Pursuant to notice, the Standing Senate Committee on Transport and Communications met this day at 9:30 a.m. to consider the Bill C-186, intituled: "An Act to authorize the provision of moneys to meet certain capital expenditures of the Canadian National Railways System and Air Canada for the period from the 1st day of January, 1970, to the 30th day of June, 1971, and to authorize the guarantee by Her Majesty of certain securities to be issued by the Canadian National Railway Company and certain debentures to be issued by Air Canada".

Present: The Honourable Senators Robichaud, (*Acting Chairman*) Burchill, Denis, Hollett, Kinnear, Langlois, Michaud, Pearson, Smith and Sparrow. (10)

Present but not of the Committee: The Honourable Senators Aird, Benidickson, Cook and Grosart. (4)

In attendance: Mr. Pierre Godbout, Assistant Law Clerk and Parliamentary Counsel.

On Motion of the Honourable Senator Smith, the Honourable Senator Robichaud was elected Acting Chairman.

It was *Resolved* on Motion to print 800 copies in English and 300 copies in French of these Proceedings.

The following witnesses were heard:

CANADIAN NATIONAL RAILWAYS AND AIR CANADA:

Mr. R. T. Vaughan, Q.C., Vice-President and Secretary of the Company.

Mr. G. M. Cooper, General Counsel

It was resolved to print as appendices to these Minutes as Exhibit "A" document intituled: "Statement by CN Witness to the Senate Committee on Transport and Communications, etc", and as Exhibit "B" document intituled: "Canadian National Railways Financing and Guarantee Acts".

After discussion and upon Motion of the Honourable Senator Burchill, it was Resolved to report the said Bill without amendment.

At 11:30 a.m. the Committee adjourned for consideration of another Bill.

ATTEST:

Aline Pritchard
Clerk of the Committee

Reports of the Committee

Thursday, March 11th, 1971.

The Standing Senate Committee on Transport and Communications to which was referred the Bill C-186, intituled: "An Act to authorize the provision of moneys to meet certain capital expenditures of the Canadian National Railways System and Air Canada for the period from the 1st day of January, 1970, to the 30th day of June, 1971, and to authorize the guarantee by Her Majesty of certain securities to be issued by the Canadian National Railway Company and certain debentures to be issued by Air Canada", has in obedience to the order of reference of March 4th, 1971, examined the said Bill and now reports the same without amendment.

Respectfully submitted,
H. J. Robichaud
Acting Chairman

23614—2

The Standing Senate Committee on Transport and Communications

Evidence

Thursday, March 11, 1971

The Standing Senate Committee on Transport and Communications, to which was referred Bill C-186, to authorize the provision of moneys to meet certain capital expenditures of the Canadian National Railways System and Air Canada for the period from the 1st day of January, 1970, to the 30th day of June, 1971, and to authorize the guarantee by Her Majesty of certain securities to be issued by the Canadian National Railway Company and certain debentures to be issued by Air Canada.

Senator Hédard Robichaud, (*Acting Chairman*) in the Chair.

The Acting Chairman: Honourable senators, we have before us for consideration this morning Bill C-186. Before proceeding I would, in your name, welcome the new clerk of the committee, and also entertain motions for the regular publication of documents.

Senator Smith: Mr. Chairman, I think it would be quite appropriate to point out that Mrs. Pritchard, the clerk of this committee, has been on the Senate staff in other responsible capacities for some years. I think it is worthy of note that she is the first lady clerk of a committee in the Senate, although the precedent was established some years ago in the House of Commons.

Mrs. A. Pritchard (Clerk of the Committee): Thank you very much.

The Acting Chairman: I must say that I have known Mrs. Pritchard for a number of years, because I was privileged to have her services as my secretary.

Bill C-186, concerns the capital expenditures for the Canadian National Railway System and Air Canada.

We have with us this morning, Mr. R.T. Vaughan, Q.C., Vice-President and Secretary of Air Canada and also Vice-President and Secretary of the Canadian National Railways. We have Mr. G.M. Cooper, General Solicitor for the C.N.R. and Mr. S.D.H. Thomas, Assistant Comptroller of Budgets and Statistics. We also have Mr. W.G. Cleevely, Co-ordinator of Capital Budgets. I believe it is customary for the representative of the Canadian National Railways to make a statement before we proceed with questions from honourable senators regarding the bill. Mr. Vaughan, we would welcome a statement from you.

Mr. R.T. Vaughan, Q.C., Vice-President and Secretary, Canadian National Railways: Thank you, Mr. Chairman, good morning, senators.

Senator Benidickson: Before Mr. Vaughan speaks, may I just say that when this bill went before the Committee on Transport and Communications of the House of Commons, the only witness was the minister. Am I correct in that?

Mr. Vaughan: We were not present. Could I explain that for a moment? The procedure in the past has been that the companies appear before the appropriate committee of the House of Commons in dealing with their annual reports and budgets following the approval of the budgets by order in council. Flowing from that procedure is the draft of this piece of legislation, which is then introduced in the other place and which you, yourself, many times have piloted through the house. It has never been referred to a Commons committee before. The tradition was when it went through the House of Commons that it came to the Senate and the Senate dealt with it in its own procedural fashion, and then referred it to this committee. The tradition over the years has been for us to come to this committee rather than appearing twice over there. That is the reason for that procedure.

With the subsequent change of parliamentary procedure rules where every legislative bill has to be referred to a committee of the Commons unless there is otherwise unanimous consent over an emergency piece of legislation, every bill goes to a committee. On this occasion we were not asked to appear before the Commons Committee, the reason being that in a week or two we were going to be there dealing with our annual report. Similarly, Air Canada is going to be there dealing with its annual report for 1970.

Senator Benidickson: This is pursuant to a commitment the minister gave to the committee of the other house when he was the sole witness.

Mr. Vaughan: That is correct.

Senator Benidickson: And he said that there was some urgency about passing this bill because of your own financing and the necessity to pay certain bills that relate to expenditures in 1970, and as the bill relates to expenditures between January 1, 1971 and June 30, 1971. Therefore, he made a commitment in view of the urgency that the normal questions about operations of the Crown companies or the financing of those Crown companies could be reviewed by parliamentarians from the other place.

The Acting Chairman: Senator Benidickson, I do not like to interrupt, but would it not be preferable first to have a statement from Mr. Vaughan then you would be entirely free to bring this matter up.

Senator Benidickson: With all respect, Mr. Chairman, I think all members of the committee should be aware of the fact that we are doing something today that is opposite to past practice.

The Acting Chairman: I think it has always been the practice, honourable senators, to have representatives of the CNR and Air Canada before this committee when similar bills have been before this committee in the past.

Senator Smith: Without exception, in my experience, it goes back a few years.

Mr. Vaughan: What I was trying to explain, Senator Benidickson, is that when you piloted the bill in the Commons, the CNR used to go to the Commons committee and go

through their questioning period in connection with its annual report.

Senator Benidickson: Subsequent to that you brought forward a bill similar to the one before us today.

Mr. Vaughan: Which never went to a Commons committee. It came to this house and this committee. We may get into this later on, and I can elaborate on that.

I am grateful to appear before you once again. I would like to introduce Mr. James Smith, Assistant Treasurer of Air Canada, who is familiar with the capital budget of Air Canada. I would also like to thank you, senators, for your courtesy in postponing our appearance from yesterday to today out of respect and deference to the death of Mr. Gordon McGregor, the former President of Air Canada, who served his country and his company very well over two decades. Mr. McGregor, I should say—and I know you will agree—was an outstanding and dedicated Canadian, and a perfectionist in his own right. I would like to pay this tribute to him on behalf of both companies.

Senator Benidickson: Having been a member of a committee over practically all of the period of time during which Mr. McGregor appeared, I would just like to thank Mr. Vaughan for making those remarks. I endorse them wholeheartedly. Mr. McGregor was always one we could understand, and one who was very sympathetic to parliamentary investigations.

Mr. Vaughan: Thank you, senator. I am really in your hands as to your procedure. In former years we have passed out a memorandum which explains the bill clause by clause. This seems to be a satisfactory procedure in the past and I have asked the general solicitor to take you through that rather quickly. Also, I passed out in advance another memorandum which I know you have not had time to read. This refers really to my exchange with Senator Grosart last year. When we come to that memorandum perhaps Senator Grosart will wish us to explain it and my difficulty in endeavouring to deal with it. If it is your wish we will proceed with the explanations of the bill. Is that satisfactory?

Hon. Senators: Agreed.

Mr. Vaughan: I would like to introduce Mr. Cooper, the general solicitor of CNR. He will deal with Bill C-186 clause by clause.

Mr. G.M. Cooper, General Solicitor, Canadian National Railways: Thank you, Mr. Chairman and honourable senators. As you well know, this bill deals with a number of financial matters related to Canadian National Railways and to Air Canada with respect to the calendar year 1970 and the first half of 1971. Its provisions follow very closely the form and principles of the corresponding 1969 act. The order in which they appear in the bill are as follows: Parliamentary authority in respect of capital expenditures and capital commitments by CN during 1970 and the first six months of 1971 . . .

Senator Grosart: The reason I asked it was that you used the word "parliamentary", which is not used in the brief.

Mr. Vaughan: We more or less assumed that any brief has to do with Parliament, otherwise we would not be here, I guess.

Senator Grosart: We have been told on several occasions that there is an authority by order in council.

Mr. Cooper: That is correct, senator.

Mr. Vaughan: Pursuant to certain statutes.

Senator Grosart: That is why I raised the point, that the verbal description was "parliamentary". That is very important, that we have that recognition, that it is parliamentary authority and not an order in council that we are talking about.

Mr. Cooper: I could read this document but I think it would take a little longer and it is always rather tiresome to the people listening to have exactly the same words as appear on the page. The other purposes are: Provisions related to the sources of the money to meet those expenditures, and then there is a section providing for Government loans to Air Canada andor Government guarantees . . .

Senator Grosart: Excuse me. Mr. Chairman, may I suggest that we have the questioning section by section, rather than waiting and going back?

The Acting Chairman: I agree, if honourable senators prefer to question section by section.

Mr. Cooper: May I say, senator, that on the first page of the memorandum there is a capsule of the bill, and then as I turn the pages I come to the particular sections in the order in which they are set out in the bill.

Senator Grosart: I am interested in the capsule.

Mr. Cooper: Shall I continue with the capsule?

Senator Grosart: If you would indicate when you are through with your explanation of a section . . .

Mr. Cooper: Certainly.

Senator Grosart: I suggest Mr. Chairman, it would be simpler to do it that way, rather than go back afterwards.

The Acting Chairman: You can proceed, Mr. Cooper, and then there will be questions from Senator Grosart.

Mr. Cooper: The third general purpose of the bill is provision for certain financing of Air Canada's capital requirements. Fourthly, there is provision of moneys needed to meet any seasonal or annual income deficiencies of Canadian National, in the case of one section, and Air Canada, in the case of the companion section.

I think I might say that is the capsule. The next thing would be to say that the first section is section 1, and go on.

Senator Grosart: Mr. Cooper, may I ask you a question? There is a difference in the wording of items (ii), (iii) and (iv) on page 1.

Mr. Cooper: Yes, sir.

Senator Grosart: First, you say that the purpose of the bill is to obtain authority, and you said "parliamentary authority", in respect to capital expenditures and capital commitments during 1970 and during the first six months of 1971.

Mr. Cooper: Yes.

Senator Grosart: Then you say "provisions". Why do you use the word "authority" in one case and "provisions" in the other?

Mr. Cooper: I suppose the long title of the bill is "an act to authorize the provision of money", but some of the sources of money, such as depreciation accruals, would accrue without the provision. There is no requirement for authority to accrue depreciation accruals, for example, but there are provisions respecting the use of those accruals.

Senator Grosart: May I ask, then, is no authority required for (ii), (iii), and (iv)? Is no parliamentary authority required?

Mr. Cooper: Oh, certainly, it is. For instance, with respect to the purchase by the Minister of Finance of preferred stock, which is a source of funds, parliamentary authority is required and it is provided for in this act. Again, to the limited extent that the CN budget contemplates borrowings, which is solely with respect to branch lines, borrowings from the minister or guarantees by the Government of those borrowings, parliamentary authority is required. So that certainly some parliamentary authority is required.

Senator Grosart: Would this cover (ii), (iii) and (iv) or, to put it in another way . . .

Mr. Cooper: I think the answer is yes.

Senator Grosart: . . . or could you tell us if there is anything in the bill before us that does not require parliament authority?

Mr. Cooper: Yes, we do not require additional parliamentary authority in respect to the capital expenditures. The parliamentary authority in respect to the capital expenditures exists on a permanent basis in the CNR Act. The administrative control is order in council and the authority is complete when the order in council is passed.

Senator Grosart: What is the authority for the order in council?

Mr. Cooper: Section 37 of the CNR Act.

Senator Grosart: What act?

Mr. Vaughan: The Canadian National Railways Act.

Senator Cook: If you look at the memorandum . . .

Mr. Vaughan: If you are going to get on this point, Senator Grosart, we should turn to the second memorandum.

Senator Cook: There was some misunderstanding, I think, on the question of the order in council authority to approve of the budget. Many senators felt that this was the authority for the budget. This bill is to make provision for the moneys. The authority for the capital budget is set out on page 3 of Mr. Vaughan's memorandum under the heading of "capital expenditures". It says:

> Statutory authority and control respecting capital expenditures by Canadian National is to be found in section 37 of the Canadian National Railways Act, chapter 29 of the Statutes of 1955. Under that section Canadian National must submit annual estimates of its requirements for capital expenditures, etc. Approval of the budget, in which these estimates are contained, by the Governor in Council . . . provides full authority for the company to implement its capital program.

So the company can go ahead without the authority under the act, but then of course this act provides the money. There is no conflict between the authority given by the Governor in Council and this act. They are just two steps.

Senator Grosart: Very respectfully, I would suggest that there is a conflict. You have authority to spend money, but you have not got the money. Surely there is a conflict?

Mr. Vaughan: I am not sure I follow that.

Senator Grosart: I understand this paragraph as saying there is authority to implement this capital program, that is, to spend the money. Am I correct in that?

Mr. Vaughan: That is correct.

Senator Grosart: So you can spend the money before the provision of the money has been authorized.

Mr. Vaughan: I think that . . .

Senator Grosart: Mr. Chairman, that I have to point this out. I am trying to find out what we are asked to do here, as a committee of Parliament. It has been pointed out that up to now the committee in the other place has not examined this. We had the statement this morning that our witnesses rely on this committee. This is the first time I have heard of this, and I am not questioning it. It indicates to met that in this committee and in this Senate we have been derelict in our duty if we are the only committee of Parliament which examines this bill in this way.

The Acting Chairman: At the moment.

Senator Grosart: If this has been going on for some years, I suggest to you, Mr. Chairman, that we should be very clear as to exactly what our responsibilities are as a committee. This is why I am asking these questions.

Senator Cook: Being the sponsor of the bill, may I intervene to say that the greatest bulk of the capital expenditure is found by CNR from its own resources. There are two means. There is the provision of the preferred stock, there are certain borrowings for branch lines, and there are possible deficits. If the CNR went ahead and if these moneys were borrowed on the approval of the Governor in Council and if Parliament did not vote these extra sums, the preferred stock and the borrowings, then the CNR would be in a deficit position as far as the taxpayer is concerned and Parliament would overrule the Governor in Council, which it would have no right to do.

Senator Grosart: Mr. Chairman, with due respect, I am very grateful for the answers given, but I would like to have on the record those answers from our witnesses. These are questions that to my knowledge have not been answered anywhere. As far as I have been able to find out, there are no answers to the questions I am asking anywhere on the record.

Senator Langlois: Mr. Chairman, I think we are wasting a lot of valuable time this morning. If Senator Grosart wants to have the explanation that he is seeking, he should let the witnesses make the statements they have prepared for us. They are quite explicit, and I am sure that he will get all the information he wants if he would only let the witnesses state their case. I suggest, Mr. Chairman, that we should adopt this procedure, otherwise we are wasting time. As was pointed out by Senator Cook, the second statement is quite clear and explains everything that Senator Grosart is asking. If he would be good enough to let the witnesses state their case, he would get what he wants.

The Acting Chairman: I understand that Mr. Vaughan is ready to answer Senator Grosart's question.

Senator Grosart: Before that, Mr. Chairman, may I reply to the outburst from Senator Langlois to make it clear that I have not refused to let anybody do anything. I am not a member of the committee. I have not the authority to structure the procedure, which is in your hands, and I resent the suggestion that I am preventing anybody from doing anything.

Senator Langlois: I made no such charge.

Senator Benidickson: Or wasting time.

Senator Grosart: The procedure is in your hands.

The Acting Chairman: We will hear from Mr. Vaughan.

Mr. Vaughan: Mr. Chairman, I recognize Senator Grosart's questions. We had some similar conservations about this last year, and those are in the evidence of last year's meeting.

What we have tried to do here is meet some of those questions. The only thing I can do today is endeavour to tell it the way it is. If Senator Grosart, or any other senator, wants to quarrel with the method and procedure of the way it is, and the way it has been handled, then such senators have ample opportunity to do that. I tried to explain the procedures to both houses of Parliament to avoid the company's appearing twice, or three or four times. This has been the system that has been worked out by successive administrations over the past 30 or 40 years.

As I said last year, anything is capable of improvement; anything is capable of simplification. It all depends on what is desired.

Senator Cook gave the explanation of this bill in the Senate, and, as I read it, it was a clear explanation of what is provided by this statute.

Now, in respect of the timing, we have no control over that, as you recognize. We come here in aid of the bill in order to help explain it. I am sure you would respect my wishes not to be drawn into questions that are beyond my jurisdictional competence to answer. I would ask you sincerely not to get me involved in a political debate on whether the way it has been done is right or wrong, but it has been done in that way for many years.

This bill, as Senator Grosart and other senators as well as members of the Commons have pointed out, has its timing somewhat out of sequence. As Senator Benidickson knows it was in the spring of the year that the bill used to be dealt with in the Commons, immediately following our appearance before the Commons committee. Then the bill would come here and, having appeared before the Commons committee we would then come here to go through the same procedure. However, in the past few years, through other administrations, through parliament's methods of controlling the priorities of its legislation, this piece of legislation has got out of timing somewhat. We would like to see it dealt with in the spring again.

This bill was introduced in the fall of 1970 to deal with an 18-month period beginning January 1, 1970 and extending through to the end of June, 1971. There are certain aspects of the legislation, and our budgetary control pursuant to other statutes, that are authorized by Order in Council pursuant to the CNR Act and the Financial Administration Act, but through history and tradition it was deemed appropriate that the CNR, because of control mechanics should endeavour to put all of its financing procedures and requirements and the spending of its own depreciation money into one piece of legislation. This is what this bill supposedly does.

The bill went into the house in the fall and was delayed there owing to the fact that there were emergency pieces of legislation that had to be dealt with. So the forward motion of that bill was delayed in the House of Commons. Similarly, the CNR, by parliamentary reference of the House of Commons, was directed to go before the Transport and Communications Committee of the House of Commons to deal with two matters. One was a matter of pensions on the CNR. We appeared before that parliamentary committee in June of last year. I appeared before the Commons committee prior to that on two other occasions, dealing the statements of the CNR, the deficits of the CNR and the borrowings of the CNR, which also have to go into the Appropriation Act.

The pension matter was dealt with before the parliamentary committee, but we were still under notice to come back to deal with the pension matter again, and were still under notice to come back and deal with the financial structure of the CNR, which is a very large matter. It was the intention of that parliamentary reference to deal with all aspects of the financial structure of the CNR, the objectives of the CNR, the accountability of the CNR and the control of the CNR, and that sort of matter.

The session ended, I believe, in October. We did not go back and deal with the financial structure. But immediately thereafter the reference was made again so that in a week or two we will go before the committee of the other place to deal in toto and in a broad manner with the financial structure of the company.

Senator Benidickson: Will you be going to the House of Commons Transport and Communications Committee before the printing and publication of the 1970 Annual Report?

Mr. Vaughan: That could well be. That really is up to the wishes of the committee. We will go when they ask us to go.

Senator Benidickson: But your intention and your planning are to go pursuant to a commitment of more than a year ago.

Mr. Vaughan: And renewed again.

Senator Benidickson: By a new reference in that place?

Mr. Vaughan: Yes, sir.

Senator Benidickson: Well, you will be prepared to look at the financial history of the Canadian National Railways and even its forward planning.

Mr. Vaughan: That is correct.

Senator Benidickson: With respect to capital as well as annual expenditure?

Mr. Vaughan: Yes, sir. I was just at the point of reminding Senator Grosart of our conversations of last year where he asked me about improvements, and I said certainly the bill was capable of improvement; but it depends on what is the objective of that. There had been discussions during the year with the appropriate departments of Government about the legislation. We are continuing those and they will

be continued. Then, of course, we go before that committee to deal with the subject. Added to that fact also was the examination of the Air Canada legislation.

The Air Canada legislation was passed in 1937, and, except for a few minor amendments, has not been revised since. Similarly, the capital structure of Air Canada has to be looked at, and discussions about that subject are going on between representatives of Air Canada and the relevant Government departments, because they have a 94 to 6 debt to equity ratio, or in that vicinity, and the legislation covers the administration of that corporation. So it seems due for review in light of today's conditions.

On all of these matters I am being very frank and I hope that I am not offending any of the Government people sitting here listening—all these things have been going on, but in light of all those matters it was considered by the Government that it was appropriate to proceed again with the bill in this fashion. That was the decision they made. The bill, as I say, was held up in the Commons due to other things, so we are here today to ask you sincerely to pass the bill. We need the bill. If we did not need the bill, we would not be here. We need the six-month matters referred to in it. Canadian National needs the preferred stock purchases provided in the 1952 Capital Revision Act and extended by this legislation. Furthermore, the Government needs the authority to give us funds pursuant to our requirements in the first six months on the deficit account of 1971.

Air Canada as well needs money pursuant to this statute, so this bill is important, and this is why we have come to you today to try to explain it, and we hope you will bear with us. If there are broader issues, and I know there are, we can deal with them. I would deal with them and the Company would deal with them, if the Senate so wishes.

Senator Grosart: If I may make a comment on that, Mr. Chairman, I am very grateful for the statement of Mr. Vaughan. He asked us to bear with him, and I will ask him and his colleagues to bear with me. The reason I raise these matters is not because I want a witch hunt or because I want to go back over the past and cry over it, but we do have evidence, statements by the Minister and representatives of the Corporation, that this is not a satisfactory way to handle this matter. I shall use the appropriate quotation elsewhere. We have the statement from the Minister that we are approving something which has already been done. We have his statement of last month that this is not a satisfactory way. This was made in the Transport and Communications Committee of the other place on February 16th. That was the only session that dealt with this bill.

We also have the statements that the Company has had to do, and I quote, "all manner of things to keep the Corporation afloat in a sense." This is a statement by the Minister that because of this kind of delay it has been necessary "to do all manner of things." I suggest that a parliamentary committee faced with that statement should know what those "all manner of things" are. It is ominous that a company, a Crown corporation, should be put in that position. I am very much against its being put in that position.

Therefore, I believe there are two questions properly before this committee. The first one is: How can we improve this mechanism? The second one is: How can we speed it up so that the Minister does not have to come before a parliamentary committee and say he will not take responsibility for this bill? I say that, honourable senators, because that is the statement made by the Minister. He said that before the parliamentary committee. I see some eyebrows raised, but let me quote:

> I do not want to take responsibility for something that has been embedded in the system for decades really, but nevertheless it is something that in my judgment we ought to get rid of or improve in some way so that we do not have the kind of situation where it is in a way an after-the-fact judgment.

This is the statement of the Minister responsible for the bill and is to be found on page 120. I suggest that when we are faced with statements like that, I personally at least am not too much concerned about the reactions of any senators to my questions.

The Acting Chairman: In this regard, honourable senators, perhaps I should point out that I was asked by Senator Grosart yesterday if it was possible for the Minister to be present at this meeting. I had no authority since I am not the chairman of the committee. It is only when it was moved this morning that I act as chairman that I had any authority to represent the committee, or to talk on behalf of the committee. Nevlertheless, I did contact the Minister yesterday, and he indicated that it was almost impossible for him to be present at this meeting this morning, but he was prepared, if so requested, on another occasion—for example at the presentation of the Estimates of his department—to appear before this committee of the Senate and discuss transport in general as well as the CNR and Air Canada. I thought I should make this clear to honourable senators.

Senator Grosart: Mr. Chairman, I should be very happy to see us move through this matter quickly today. I do not believe we can reach the conclusions that perhaps we should reach in reporting back to the Senate, and in discharging the duty of this committee. I would suggest, therefore, that as far as I am concerned, it is not necessary to go through the whole laborious process of trying to understand this bill. I do not understand it and I have tried for a year to do so. I doubt very much if anybody does understand it. I am quite convinced that no member of Parliament does, and there is clear evidence that the Minister does not. I am only interested in seeing how we can improve this. Therefore, I would like to ask two main questions only.

The Acting Chairman: You may proceed.

Senator Grosart: Is it possible to improve this situation so that it would become in effect a normal operation to have a Crown corporation responsible to Parliament present its Estimates in the usual way, and have those Estimates approved normally in time? Secondly, is it possible that this matter can be handled in future in such a way that the Corporation will not be in the position of resorting to "all manner of things to keep the Corporation afloat"?

If our witnesses say that they believe it is, my suggestion then would be that perhaps—and I am being very careful here because I do not want to get into the political side—they might consider putting down in a memorandum the kind of mechanism that could be developed to prevent this kind of situation arising so that a year from now we will not be presented with the same dilemma, the apparent conflict between authorizing, providing, approving—all words which are very hard to reconcile to anybody who reads these things in ordinary English.

Mr. Vaughan: As I mentioned a moment ago, senator, my remarks on this point will have to be limited to what I consider to be my competence to comment upon them. I do not presume to tell the Senate or the Commons or the Government how to administer their affairs, but I would be glad and my people would be glad to advise the Government and assist the Government in dealing with this legislation and the improvement of this legislation. As I mentioned previously, trying to simplify what is here is not the whole issue, as I see it. We can write this in very simple language, or the Department of Justice or somebody else can do it, but it really goes to the whole matter of how the Government and the country wishes to have its Crown corporation run and administered.

Secondly, what is the measure of accountability and control? These are the two issues and these are the matters that we wish to discuss with the Government. We wish to discuss these with them, on account of Air Canada and on account of the railway. These are two great companies serving the commerce of Canada and they operate on a commercial basis under relevant control statutes. That goes to a whole gamut of philosophy as to how proprietary corporations are to be operated and what is the measure of control that the Parliament of Canada is to have over them.

Going back in history—many of the senators here will know this, Senator Benidickson and the others—going away back to the Drayton Acworth Commission, and the various commissions . . .

Senator Benidickson: I frankly confess that I do not remember. It is so complicated that I have forgotten.

Mr. Vaughan: Anyway, the Drayton Acworth Commission was in 1917, and that was a prelude to the taking over of the bankrupt companies that went into the amalgamation of Canadian National. It was decided then that they should be operated on a commercial basis accountable to Parliament in a proper manner.

Times change and we live in a different world. There are different demands on companies and society, and Canadian National and Air Canada want to be able to respond to these demands, so we would welcome that kind of discussion.

Senator Benidickson: There is the question of whether it is duplicated. You have intimated that you contemplate that the House of Commons is interested in this subject as a whole.

Mr. Vaughan: We are under reference there, as I told you. It is not merely a matter of just changing some debt into equity. I think it has to be more than that, and that is what Senator Grosart referred to, too.

Senator Grosart: Mr. Vaughan, I hope you do not mind if I read between the lines of your statement.

Mr. Vaughan: I did not leave much Space. I was trying to do it in single spacing. Do not make it too big.

Senator Grosart: I think you did exceedingly well, under the circumstances.

Senator Benidickson: I am not very familiar with the bill, but I am familiar with this type of statute. As Isaid the other evening, in the Senate, I have a record of piloting similar bills in my years in the House of Commons. My concern is this! My memory goes back to the capital revision of 1952. I participated, as assistant to the Minister of Finance in advancing that legislation. There was, prior to that, in 1937, a previous capital revision. We hear frequently from some sources, including after-dinner speakers representing the Canadian National Railways, that they are saddled with a debt structure, and usually they talk about deadwood that goes back to the amalgamation of these roads in about 1923.

My recollection is that in 1952, when we did revise the capital structure of the Canadian National Railways, Parliament was more or less told that henceforth it would be a reasonably sound corporate set up and could pay its way. Then, in subsequent years, we had a bill similar to the bill that we have before us today, an annual bill, asking for more capital funds.

On each occasion there was evidence from the president, who appeared in those days before the House of Commons committee with a big staff. He always gave us the assurance that if we inject this new capital for whatever it might be—something technologically new like dieselization or the hump system of handling freight, or the provision of new and modern cars for handling certain products in larger bulk quantities, and all this kind of thing—it would pay off as it would pay off in any other company, or the corporation would go broke.

My interest is in this bill, of course. You are asking for a certain amount of additional capital, that another company would have to go to the investment market for, and prove to investors that they would get a return on the money that was injected into the capital structure. How can we get some review of the capital structure and its relationship to profit and loss, and a reference to how much non-interest bearing money has been provided in that period? How can we get some kind of statement from CNR, bringing us up to date from the revision of capital debt in 1952? This bill will add to the capital debt, despite what Senator Cook says, although a certain portion of the funds to be spent will be generated within the company from depreciation and such sources.

Mr. Vaughan: Perhaps, senator, you would not mind if I refresh your memory for a moment?

Senator Benidickson: Yes.

Mr. Vaughan: The money that is shown on page 2 of the bill is not money that comes out of the consolidated revenue fund. To use an analogy, we come to you as a "shareholder", asking you to "allow us to spend the money that we have". This is self-generated money.

There is $229 million, less the normal amount of approximately $30 million for uncompleted work, self-generated funds from depreciation accruals, and the purchase of preferred stock by the Government, and of course, the $10 million provision for branch line borrowing, which was not used.

Senator Benidickson: But that preferred stock is in an unusual situation.

Mr. Vaughan: I agree with that.

Senator Benidickson: Is that $100 million?

Mr. Vaughan: No, that is based on a formula of 3 per cent of the gross revenues from the operations on an annual basis, and it would bear 4 per cent if we were in a profit position to pay it.

Senator Benidickson: That is right. But in very few of the years since 1952 has any of that 4 per cent been paid on that preferred stock. Is that correct?

Mr. Vaughan: In some years. In 1952 we had a profit, in 1953 a profit, in 1954 a loss, in 1955 a profit, and in 1956 a profit of $26 million. Over the five years I have mentioned, there was a total profit of $8 million, which went back to the Government. We did not retain it. You are right on that equity, but—

Senator Benidickson: That, of course, did not pay 4 per cent in the four or five years in which the $100 million was spent.

Mr. Vaughan: Let me see. From 1952 to 1957 it would be five times 30.

Senator Benidickson: It would be 5 times 4.

Mr. Vaughan: It might have been $100 million.

Senator Benidickson: It paid more than 4 per cent.

Mr. Vaughan: Yes. That is equity. That is the same as if you buy stock in any company. If it does not return a dividend or if it does not appreciate, then the purchaser of the stock will have to recognize that that is so. But this budget does not add to the fixed debt. It does not add to our fixed interest. You mentioned the other two capital revisions. That is correct. There was one in 1937 which was not really an overall capital revision, but it was a reorganization of the structure in the sense of providing relief from the interest burden which had been accumulating interest on the interest so that that capital revision in 1937 was really just a reorganization.

Senator Benidickson: But any private company would either have had to reorganize or go broke.

Mr. Vaughan: But bear in mind that you have been dealing with broke companies.

Senator Benidickson: So it was wiped out.

Mr. Vaughan: No, not this one. Not the 1937 one. The 1952 recapitalization was the one where it was converted. Half of the outstanding debt was converted to proprietors' equity. You will see it in our annual report referred to as shareholders' equity. That lowered our interest charges from year to year to a given point. Later I want to ask you a question about this, but as we went on through the fifties and sixties, because of the lack of depreciation practices employed by the company in past years, we had to borrow all of the new money to produce the dieselization and the modern methods that you talk about..You will see those borrowings again in the annual reports that are tabled.

When Mr. Gordon appeared in 1952 there were many long discussions with the Government, involving Dr. Clark and others as well as the minister of finance of the day, having to do with the forward financial structure of the company. The bill that was passed in 1952, in certain respects, had a nine-year limit on it.

Senator Benidickson: A nine-year or a ten-year limit.

Mr. Vaughan: Well, ten, yes. So in the early sixties the provisions of that legislation, as I recollect the history, were to be re-examined, and since then the provisions that expired in the 1952 act—

Senator Benidickson: You promised to pay $100 million starting ten years after 1952. It was something like that.

Mr. Vaughan: You are dealing with a $100 million bond now, which is different from what I am talking about.

Senator Benidickson: We have a clause in here, and we have had them in recent bills, which again postpones or forgives you that obligation. Is that correct?

Mr. Vaughan: Well, there was a $100 million bond that was to be interest-free and that was part of the rearrangement. I have a note on that somewhere here.

Senator Benidickson: There is a similar thing in this bill here before us today.

Senator Grosart: Is that what is commonly called a moratorium, Mr. Vaughan?

Mr. Vaughan: Yes, I know what is in the bill, but I was looking for the note I had on that bond.

Senator Benidickson: It is in section 13.

Mr. Vaughan: I know it is in the bill, senator. I was trying to find a note I had on it. It is a $100 million bond. That bond was given and was to be interest-free for ten years. It is to mature in 1972. At any rate, I cannot find the note.

The Acting Chairman: You are right. It is 1972, Mr. Vaughan, because it is one year commencing from the 1st of July, 1971.

Mr. Vaughan: But that moratorium was really just part of the overall financial rearrangement of that time, when $762 million was put into equity, and there was another $100 million as the debt where we were to be forgiven the interest for a given time and then it was to mature in 1972.

Senator Benidickson: What was to mature?

Mr. Vaughan: The $100 million bond.

Senator Benidickson: It was a single $100 million.

Mr. Vaughan: That is correct. The rest is the unconverted half of the old debt, and we are paying our interest on it now. This is what brings us up to the $74 million of interest we have to pay. These are the matters that have to be looked at again now.

Now, somebody mentioned a statement. I really do not wish to be neglectful of making any statements that I undertake to make, but my question is what do I do if I am on notice to appear before the Commons committee about this matter? I will ask your indulgence in advising me what to do about that.

Senator Grosart: I certainly would not presume to advise you, Mr. Vaughan, as to what you should do in respect of a notice from the Commons. I would be frightened to death to even make a suggestion.

Mr. Vaughan: I guess it is a rhetorical question. What I really do not know, and this refers to my previous remarks, is what to do in such a situation. Similarly, if you had a reference to us here and then you started reading that I was over somewhere else making statements, what would be your reaction? That is all I am saying to you.

Senator Benidickson: This duplication does bother me, and I do not know which will come first. I asked the leader in the Senate, since he is the only minister in the Senate, whether we could get from him, if this bill is passed, a commitment similar to the commitment made by Mr. Jamieson in the House of Commons to the effect that by

one means or another they will be examining the matter. I would refer you to the committee proceedings that Senator Grosart was quoting from, namely, those of the Transport and Communications Committee of the House of Commons, Issue No. 1 for February 16.

Now you tell me that they are giving you notice that they will examine some of the items that I am interested in, such as the capital history of the CNR since the Capital Revision Act of 1952. I am not particularly anxious to have duplication, but I will read the evidence with interest.

I will speak to the Chairman and see how soon he is going to call you. If he has other priorities for that committee it may be a long time forward. Then, when your annual report for 1970 comes out, I might ask for the approval of the Senate to have the CNR officials come back to us, so that on the basis of the 1970 annual report we might have an opportunity to go into some of these questions that you will recall we are interested in. You probably read what I said last week.

Mr. Vaughan: Yes.

Senator Benidickson: You have explained the $100 million and the moratorium on that, and the moratorium that is asked for again in clause 13 this year. With respect to the net beyond depreciation and the sources of money internally generated, what are you asking for in this bill in the nature of new capital advances from the Government?

Mr. Vaughan: The railway is asking for nothing except the possibility of $10 million of borrowing for branch line purposes which we may or may not need. We put it in there in case our sources of funds do not come up to requirement.

Senator Benidickson: I am sympathetic with you in respect of branch lines, because in some instances political decisions were made for certain lines to be built that were incorporated in your capital structure for ownership andor management.

Mr. Vaughan: If I may amend my last answer, the $10 million for branch line borrowing was not used in 1970, so the only possibility is the $2 million.

The Acting Chairman: You mean of new money?

Mr. Vaughan: That we may borrow.

Senator Cook: Is it correct to say that the Government will find about $30 million for preferred stock under this bill?

Mr. Vaughan: Yes. We do not call that borrowing, however.

Senator Benidickson: That is the injection of what you call new equity.

Senator Cook: You call that new money.

Senator Benidickson: I would call it new money because if I was an investor, based on the recent history of the road, I would not think I was going to earn any interest on it.

Senator Cook: Does not this act also obligate the Government to fint the amound of the deficit of the CNR for 1970, if any?

Mr. Vaughan: Yes.

Senator Benidickson: That leads me to my next question. Over the years in which you have had a deficit, the Government usually advances that deficit by an item in the supplementary Estimates for the fiscal year, and sometimes it has been for a substantial number of millions of dollars. Now are those deficits accumulated on your books in a way that obligates you to pay any interest on them?

Mr. Vaughan: No, sir.

Senator Benidickson: So that that again is practically a gift from the shareholders?

Mr. Vaughan: I would not call it a gift. I mean we operate the company for Canada. These are the financial arrangements that Canada undertook to carry out, and we are part of it. We are your representatives in dealing with it, but we try to deal with it in a competent and business-like manner.

Senator Benidickson: But you are under no obligation to pay back or consider that as worthy of interest payment, or anything else?

Mr. Vaughan: No, that is what the 1937 act wiped out.

Senator Cook: That debt payment in 1969 was in the order of $24 million, was it not?

Mr. Vauhgan: Yes.

Senator Cook: Do you know what it will be in 1970?

Mr. Vaughan: The 1970 report which will be out in two or three weeks' time gives the results of the operations. The 1970 deficit will be slightly higher than that of 1969 due to many factors. It will not be too much higher, perhaps $3 million or $4 million, or something like that. Short of disclosing the actual figure, it will be in that zone and it will probably appear in an Estimate somewhere. We had a difficult time in 1970 to control matters since the economy generally had difficulties here and there, and the automobile strike affected us also. There were matters like that that affected our business, but we thought we were able to control it pretty well within that zone. But our net before interest, you know, is in the $45 million to $50 million zone, and if we had a good clear fair shot at trying to handle this thing without a 50-50 equity, we could do much better with this company.

Senator Benidickson: That is what I was coming to. When you issue your press release or whatever manner you use to present your annual report, you usually make a statement indicating what your operating profit is, if there is an operating profit, and I guess there has been one in recent years. Also in that report you add a statement similar to what you have just said, that if you did not have to pay interest on certain things, your deficit would not be X number of dollars. Now what are those things that you think you should be relieved of paying interest on?

Mr. Vaughan: Well, there is the debt. There are many bonds in here and a debt structure which amounts to $1.8 billion. We have referred to capital revision for some time, as I said a moment ago, and Parliament has referred to the capital structure and has referred the matter to the Commons committee. We know that any company cannot be debt free. It would be a nice kind of company to have if it were debt free. It would be a beautiful operation if you had no debt. But it is the relationship of the debt to equity that kills us.

Senator Benidickson: As I recall the situation in 1952, the then officers of the company were fairly satisfied with the

revision in capital made in 1952, and said that they could handle that as any other business corporation, and then in subsequent years when they wanted additional Government borrowings for such things as dieselization and other matters, they similarly said that they would pay off. Now why should not the company consider that that portion of the debt that was left out in 1952 and what has been incurred since 1952 in annual borrowings, which were always alleged to be on a commercial basis, as worthy of interest, as any other company would, and as part of its debts?

Mr. Vaughan: That is what it is today, and somebody has to pay.

Senator Cook: What is your annual interest? Is it about $80 million?

Mr. Vaughan: It is $74 million. What happened in 1952 was that the officers of the day dealt with the matter at great length, and with a great deal of analysis and study, and tried to peer into the future, as any business organization does, and they probably would have wanted more relief from the debt they had going back to past companies if they could have got it. But what appears in the 1952 statute is the accommodation that was reached between the Crown and the company.

Senator Grosart: That was the best you could get at that time.

Mr. Vaughan: Yes. That was to be reviewed after a given period of time based on experience. During the fifties there were many technological changes that came about. We had to bear the vast expenditures on the switch from steam engines to diesel, and all the associated plant changes that went with that.

Senator Grosart: And so did your competitors.

Mr. Vaughan: So did our competitors, but they are a wealthy company and a good company. They are a well-run company, and I take no credit away from them. That company is a credit to Canada, but you must bear in mind that that company was a cohesive unit, and it was designed and built as such and so it was able to control its destiny from the beginning. What was handed to the management of this company in 1919 to 1923 was about 300 or 400 bankrupt companies, and that is what we have been trying to deal with ever since and also with the merging of the diverse companies and lines that went into that. Canada at that time had more railroad mileage than any other country in the world, but I will not go over the history of that.

Senator Benidickson: That is what I call some political load that was put on your shoulders.

Mr. Vaughan: What we are saying now is that if we had the same depreciation practices that extend back through the history of all those companies and the one that eventually emerged, we would not have this big debt structure on our neck today.

Senator Benidickson: Despite the 1952 act?

Mr. Vaughan: Despite the 1952 act, and we think that perhaps that bears looking at.

Senator Cook: It is also fair to say that you are operating certain services now by statute and otherwise that you would not otherwise operate. There are certain services that are not profitable that you have to maintain.

Senator Grosart: This applies to the private company too.

Mr. Vaughan: Well, we get into the National Transportation Act there, and you know the basis of that.

Senator Cook: My point is that with the costs of operation over the past ten years, the CNR has done a fairly good job to contain its debt to a figure around $24 or $26 million in view of the fact that the costs of operation keep going up all the time. I do not think it is an unsatisfactory performance at all.

Senator Grosart: You meant the deficit of $24 million, not the expenditure.

Senator Cook: The annual deficit in the order of $24 to $26 million.

Senator Grosart: As a guess, what percentage of the $74 million in interest would you say would not be applicable if the CNR had had what I call, for want of a better word, a clean start? In 1952, for example, the arrangement was that half of the outstanding debt would be converted to shareholder equity. I think what you are saying now is that that was not a realistic arrangement.

Mr. Vaughan: In the light of the day—and there are a lot of competent people who dealt with it—but in retrospect, looking back over the time, it looks to us that it could have been done better.

Senator Grosart: I am asking what percentage of the $74 million would you say is not the kind of debt that the CNR would have, if it had had what I call a clean start? Perhaps you would relate that to the suggested deficit of $24 million?

Mr. Vaughan: About the deficit itself, I think it is a fair statement for me to make that, if we had not gone into the capital expenditures of modernization of the plant, the deficit would be five or six times larger than it is. Your second question had to do with the relief of the interest. We think we could make a case, and we have to convince the Government of this, for a relief of $50 million to $60 million.

Senator Grosart: What would that relieve you of?

Senator Benidickson: I do not understand. That sounds very small to me.

Mr. Vaughan: In interest.

Senator Benidickson: An annual relief of that amount?

Mr. Vaughan: No. If you look at the last annual report you see that the interest is $74 million. I am saying that I think and hope we could make a case that would rearrange our capital structure in such a way that would cut that interest by between $50 million and $60 million. When you relate that to our ne operating position, we are in a profit position.

Senator Grosart: If you are able to convince the Government to do that, you would then show a plus net earnings in your annual statement?

Senator Burchill: I enjoyed very much a book called *The National Dream* Which is a history of the CPR. Your should get someone to write a history of the Canadian National, and tell the whole story.

Mr. Vaughan: We have, senator, I am sure. I am sorry if this is not in your hands. We have got more than a dream.

Senator Langlois: You have a nightmare.

Senator Grosart: You have a nightmare, Mr. Vaughan.

Mr. Vaughan: Call it what you like, it is a challenge, we try to do the best we can and we think we do a good job for Canada with this company. Mr. Smith, you should send some of these books to the senators. There are histories of this company. One starts with 1836 up to a given time, and a second brings it up to the amalgamation in 1923. The third book is now in the course of preparation by Colonel Stevens a roted historian, to bring the history up to 1950.

Senator Burchill: *The National Dream* is very readable.

Mr. Vaughan: If you watch the hockey games at night, you will notice that the Canadian National advertising talks about the fulfilment and the progression of the Canadian dream, so we are in the dream picture, too.

Senator Grosart: You have not got the same copywriter, have you?

The Acting Chairman: Are there any further questions?

Senator Benidickson: Would someone have at his fingertips a figure showing what was appropriated since 1952, net, by Parliament, for your deficits—that amount of money injected into CNR?

Mr. Vaughan: The new money department. I think you get these annual reports?

Senator Benidickson: Yes.

Mr. Vaughan: In the last one published in 1969, at page 46, you will see a statement of our position, going back to 1945. It shows our net railway operating profit or loss, our other income, our surplus or deficit before interest, our interest on debt, our surplus or deficit, and then the freight revenue per ton-mile. That is a concise statement. Do you have that?

Senator Benidickson: Yes. As to your interest on debt, that column is total interest?

Mr. Vaughan: That is the Canadian National Railways interest.

Senator Benidickson: And after 1952 it goes down very rapidly.

Mr. Vaughan: That is right.

Senator Benidickson: And that is because you did not have to pay any interest henceforth on the $770 million?

Mr. Vaughan: You see an almost equal division there, from $48,117,000 to $25,415,000. You remember I said that the $1.4 billion was divided about equally between debt and equity.

Then is goes on. Then it started to move up.

Senator Benidickson: But you are now back in 1969 to $74 million.

Mr. Vaughan: To $74,205,000.

Senator Benidickson: It is $74 million in interest alone, after we reduced it in 1952 to $25 million.

Senator Cook: That deficit represents 20 per cent of our assets. You take in rolling stock and improvements and so on.

Mr. Vaughan: Yes, we are dealing with a $4 billion corporation here. In any event, we have things to say about the capital structure and we will say them at the right time.

Senator Grosart: I have a few questions for information. First, could you tell the committee, Mr. Vaughan, what part of the $688 million requires authorization under the bill before us?. Perhaps I should explain the $688 million figure by quoting the minister again. He was asked, at page 118 of the House of Commons committee's proceedings:

> Can the Minister tell me just exactly what amount, both for CN and for Air Canada, is authorized in this bill? Is it $309 million or is it $688 million roughly speaking, including the 13 million pounds sterling in borrowing.

And the minister replied:

> I would expect it was the latter figure.

I am not going to ask you to say whether the minister is correct or not, because there are many ways of adding up the figures. I merely ask you how much of the $688 million in transactions—I am not saying expenditures, but transactions—requires authorization under the bill before us?

Mr. Vaughan: Senator, I have difficulty with the $688 million figure, frankly.

Senator Grosart: It is the minister's figure—it is endorsed by the minister.

Mr. Vaughan: I know.

Senator Grosart: I have had many difficulties with it. It is a rough addition of all the figures.

Mr. Vaughan: Let me just try and explain it. The figures are not additive.

Senator Grosart: They are not transactions, they are expenditures. They add up in my calculation to $688 million in transactions. We are asked here to authorize not only expenditures but transactions. I am asking you again how much of the $688 million requires authorization.

If that is a difficult question, I might suggest, Mr. Chairman, that Mr. Vaughan could let the committee have the answer.

Mr. Vaughan: I am sorry. I am on a different wavelength.

Senator Grosart: I know it is a difficult question.

Mr. Vaughan: I am on a different wavelength; I am sorry. I did not add them up that way. The $229 million as Senator Cook pointed out was a use of our own internal generated funds plus the $32 million that the Government buys in stock.

Senator Grosart: Mr. Vaughan, any parliamentarian has to remember that we are not merely authorizing expenditures. We have to be concerned with transactions. Transactions may be just as improper as anything else—and I am not suggesting any are.

The Acting Chairman: Perhaps Mr. Vaughan could take notice of your questions, Senator Grosart. He could then consult with his officials and send a letter to the committee to give us the information.

Senator Grosart: I would agree with that.

Mr. Vaughan: I would not mind doing that. You quoted the minister and I would like to see what he said.

Senator Grosart: You used the phrase that I quoted, "all manner of things that have had to be done", and "the considerable problems", and I am now going to quote the minister who said, "the emergency measures that might have to be taken if this bill is not authorized quickly". I would ask you, first of all, if you have had to take any emergency measures in financing to keep the corporation afloat because of the delay in the authorization now requested. If so, what are the emergency measures? I am not asking this in a critical way. It is information as to why this kind of thing should not happen again.

Mr. Vaughan: If any of the press are here I hope that they will understand that my remarks are as a result of my being in a bit of difficulty when you ask me to comment on a minister's statement.

A bill taht was introduced in November has not yet been passed that is, as of March 11. Such a bill has to have some effect on us if we require the provisions—perhaps that is not the right word—or whatever is in the bill. I told you that it was an 18-month bill. There are certain aspects of the six months of 1971 that both companies need. Failing to obtain those moneys from the Government through the Consolidated Revenue Fund and the authorization of any borrowings or moneys to Air Canada, both companies have had to exercise tight financial control. I will not use the word "emergency", and I am not saying that they do not always exercise tight financial control. But bear in mind that we have a large cash flow, and you are dealing with a billion dollars in the Canadian National and $450 million in Air Canada. We deal with banks and we have lines of credit at banks. So we have been able to deal with banks and tide ourselves over until we get this bill passed.

Senator Grosart: I have every sympathy.

Senator Benidickson: That is the answer. You have had to deal, as other people have had to, with banks.

Mr. Vaughan: Yes, sir. If I cannot pay for refrigerator, I have to go to the bank. This is the same kind of thing.

Senator Grosart: I do not want to pursue that question. I have every sympathy with you and I asked the question only to get some information before the committee, because as I say, this kind of situation that we are now faced with should not happen again next year.

Mr. Vaughan: They are not in trouble. There is no serious disaster. There is no collapse. It has been inconvenient.

Senator Grosart: I will leave that, Mr. Vaughan. I am quite satisfied with your answer.

Now, how many subsidiaries does CNR have? About 30, would you say?

Mr. Vaughan: Yes, 30 or 31 subsidiaries.

Senator Grosart: To what extent does the subsidiary operation affect your profit or loss?

Mr. Vaughan: It is all blended in together in a consolidated system.

Senator Grosart: In total, if there is a deficit, you would say there is no deficit other than on actual operations on a kind of actuarial basis that you would like.

Mr. Vaughan: Yes.

Senator Grosart: What is the relationship between the profit and loss of the subsidiaries and the CNR itself? That is, how does the company relate to the system?

Mr. Vaughan: Did you have anything in particular in mind?

Senator Grosart: No. I just wanted to know whether the subsidiaries as a group affected the situation.

Senator Benidickson: Is the Hudson Bay Railway a separate entity?

Mr. Vaughan: No. That is part of the system.

Just looking at our annual report, on page 32, it shows that the Canadian National Railways Company is the parent. The Canadian National Express Company is a subsidiary. We have netted something out of that. The CNR, France is a company that holds Scribe Hotel in Paris, and the Canadian National Realties Limited is a company that has broad powers dealing in real estate transactions; any net out of that goes into the "other income" section of the consolidated account.

An hon. Senator: Is Pine Point a subsidiary?

Mr. Vaughan: No, sir. The Great Slave Lake Railway was built under the provisions of a special statute of Parliament, and the funds were allotted by Parliament to build a line in the interest of development of resources. It was then turned over to us for operation, so that it is part of the system of operation now.

Senator Benidickson: That does not come into the balance sheets.

Mr. Vaughan: Oh, yes, sir, it does.

Senator Grosart: That is when we had some ambition.

Mr. Vaughan: That is right. That was a good expenditure. That was opening up the north.

The Acting Chairman: What is your experience with your road transportation subsidiaries?

Mr. Vaughan: The trucking companies are listed here. We are netting something out of that. Roughly $2 million, I think—or $1½ million.

Senator Grosart: What about CN Telecommunications, Communications itself?

Mr. Vaughan: That is not operated as a separate company, but it is a separate division and it is making money at the rate of about a 7 per cent return. You might start saying, I suppose, that if we are telling you how good we are, where does the loss come from. I hope you do not ask me that.

Senator Benidickson: You manage certain transportation facilities in the Atlantic provinces, and I am thinking especially of ships. Are they part of your capital structure, or are they managed simply on Government accounts?

Mr. Vaughan: We operate the vessels between the mainland and Newfoundland, and between New Brunswick and Prince Edward Island. We operate the coastal vessels around Newfoundland.

Senator Hollett: Do you operate the buses?

Mr. Vaughan: Oh, yes, and the buses. The capital involved in the vessels is provided for in a separate vote of Government. The Government then picks up the short fall between the revenue and the expenses for those operations, and those appear in a separate Estimate that comes before you. But in the annual report we refer to the payments we receive on the revenue side for the operation of those services, and they are added into the railway figures.

Senator Grosart: Are you allowed to make a profit on that?

Mr. Vaughan: Well, they are not in a profitable position at the moment.

Senator Grosart: But is there a profit on whht you charge the Government for operating these services for them, or do you do it at cost or cost plus?

Mr. Vaughan: Incidentally, I should have mentioned the *Bluenose* as well. I am a maritimer. I should not have left the *Bluenose* out. That is terrible. We get a management fee for the operation of those, senator, bacause our whole Atlantic region staff operates these things.

Senator Benidickson: Is that a lump sum or a percentage?

Mr. Vaughan: First of all, for the short fall we are paid the whole amount. I do not remember exactly what the management fee is.

Senator Cook: Mr. Vaughan, you have given a deficit figure of $25 million in round figures, and then you have rounded off your yearly depreciation figure at about $200 million. I would be tempted to make the figure $175 million to show how you break even. How do you settle on a depreciation figure like that?

Mr. Vaughan: While that is being looked up for me, may I say that there is what they call a uniform classification of accounts.

Senator Cook: Who sets that?

Mr. Vaughan: That comes from the old Board of Transport Commissioners, now part of the Canadian Transport Commission. Depreciation rates on equipment are subject to regulation, so it is not a movable feast, if you understand what I mean.

Senator Cook: You have control over it?

Mr. Vaughan: There have to be certain charges, for example, on locomotives with maybe a 30-year life. We have detailed information, and if you are interested I could show it to you.

Senator Cook: No, I just wanted your comments.

Mr. Vaughan: In hotels and so on we depreciate in a normal business manner.

The Acting Chairman: Are there any further questions?

Senator Grosart: We have not dealt with Air Canada, and I think we would be amiss if we did not ask Mr. Vaughan for a report on Air Canada. I hope he will find it possible to project his report somewhat into the future, to the extent that he can reveal any projections that are now available for public information, as to the future separation of CN and Air Canada. We will fully understand if you say it is a matter you cannot comment on.

Senator Burchill: Are we all through with Canadian National Railways?

Senator Grosart: The chairman called for further questions.

The Acting Chairman: Do you have some questions on CNR?

Senator Burchill: I just want to make a comment on the operations of the CNR. A year or two ago when we met here I criticized, as a traveller, the *Ocean Limited* from New Brunswick—the time of arrival of that train in Montreal at 8.15 when the train for Ottawa left Montreal at 8 o'clock, so that we had to wait a couple of hours for the next train. That has been corrected, and I congratulate you very much ideed, because the *Ocean Limited* now arrives at Montreal at 7 o'clock and the train for Ottawa leaves at 8. That is great but . . .

The Acting Chairman: But!

Senator Burchill: Let me tell you something. You have taken away our dining car on the train from Montreal to Ottawa, and the arrangements for getting breakfast are, if I may use the expression, lousy.

Senator Grosart: Has the bar been taken out?

Senator Burchill: I am talking about getting breakfast now.

Mr. Vaughan: We did not make any arrangements for a morning bar.

Senator Grosart: I thought you would for the Maritimers.

Senator Burchill: We used to be able to get a nice breakfast on the train, and the dining car was full every time I travelled on that train. The last time I came here on that train the car was gone and I could find nowhere to get breakfast. Finally I found a little hole some place.

Senator Michaud: I am all for you on that.

Senator Burchill: Do you travel on that train?

Senator Michaud: Yes.

Senator Burchill: You should speak up about it, you know.

Mr. Vaughan: I expected you would ask that question, although I was hoping you would not. The matter of the dining car between Montreal and Ottawa is difficult. The passenger people have been dealing with it, and have been trying to deal with it in a responsible way. They have been trying to rationalize those services since they ascertained that the dining car loss was running at $300,000 a year. The reason is the short trip. Only so many can be accommodated in the dining car. Many passengers would use the car to have coffee and nothing else, while others may have breakfast. There has been some criticism of the present situation and we are steadily looking at the provision of eating and drinking facilities on that train.

It is proposed to have some café lounge bar cars, which will have a good selection of food so that people can have a light breakfast of cereal, fruit juice, coffee and things like that.

Furthermore, we are trying to make the equipment more attractive. This is a sketch of a coach. The problem we ran into was having the catering facilities some distance from

passengers' seats, so that when someone got his hot dog and coffee he did not know what the devil to do with it. One has only two hands and on getting back to your seat you have to stick the coffee between your knees and put the hot dog on the seat. We are going to have fold-over tables on the coach equipment, and that will provide an adequate service. It is surprising to note that since we took off the diner there has been no diminution in revenue.

Senator Benidickson: From the passengers?

Mr. Vaughan: From the eating facilities in the parlour car section, so-called. In the café cars we will have airline style trays to be attached to the seat, and light meals will be served there. In the lounge car there will be tables on which people can put food, and so on.

Senator Burchill: Do they carry the food through?

Mr. Vaughan: This is a sketch of the bar lounge. There are instant warm ovens, so that passengers can get hamburgers, hot dogs, cereal, fruit juice, coffee, chocolate bars, pop and things like that, and take them back to their seats, as I have just explained. You will see from the sketch that we are trying to make the bar car attractive. It is not our intention to endeavour to downgrade the Montreal-Ottawa service. Far from doing that, we think we are going to provide a good service. We want to minimize the loss. That seems to be an obligation we have in view of the number of people eating on the train.

The Acting Chairman: Mr. Vaughan, Senator Grosart asked a question about Air Canada. Perhaps you could give us a general statement.

Mr. Vaughan: It was about the relationship of the companies, I think.

Senator Grosart: Just a general statement.

Mr. Vaughan: A genaral statement would be that historically, as you know, since 1937 the Canadian National Railway Company has been the one and only shareholder of Air Canada.If you look in the Air Canada annual report you will see the $5 million equity, and Canadian National is the only one to hold that. It means they have a lopsided debt equity structure. In the past year or so there has been discussion between the chairman, Mr. Pratte, and the Government about a revision of the Air Canada legislation, and a revision of the capital structure of Air Canada.

So far as the relationship of the two companies is concerned, we agree that it is wrong that Canadian National should be the only shareholder of Air Canada. There is a case to be made for continued co-operation between the two, and matters they could do together that would be of benefit to both. That is the general principle of the discussions that are going on.

Senator Benidickson: The ultimate shareholder is the same, the public.

Mr. Vaughan: The ultimate shareholder probably. Canadian National might hold a very minor shareholding position in future arrangements, and the Government of Canada hold the rest. That is as far as the discussion has gone at the moment. There is no plan in motion to offer Air Canada stock on the market.

The Acting Chairman: Are there any further questions?

Senator Grosart: What is the financial position of Air Canada at the moment?

Mr. Vaughan: There again, the annual report will be submitted in March. Would you allow me not to answer that?

Senator Grosart: Yes, of course.

Senator Benidickson: This may or may not be a fair question. If we were to omit the Minister of Finance and the Minister of Transport, who are referred to several times in the bill, and their deputy ministers, who would you consider your senior liaison men between your Montreal head office for Air Canada and CNR and these two government departments in the day to day discussions or parliamentary liaison?

Mr. Vaughan: Well, there is, I suppose a liasion of minister to chairman. That goes on, as you would know. In other broad matters and these fundamental issues we are talking about, it would be with ministers or their deputies or their assistant deputies. In other respects, Mr. Taylor here is Vice-President of Air Canada and deals extensively on day-to-day matters as they affect government and bilateral negotiations which have to go on as between Canada and other countries with regard to route structures. Some gentlemen over here in the finance branch of the Department of Transport deal with our people on the Atlantic region in the operation of vessels. Our accounting department here deals with the Department of Finance. There is a broad relationship that goes on in the administrative control structure, as I would call it, on a daily basis. Is that what you mean?

Senator Benidickson: Yes, but I think I would sum it up by saying we are left in the position that basically our approach is it should be left to the Minister's office.

Senator Cook: Assuming that the conversations take the normal course, can we look forward to seeing you next year again on a similar bill?

Senator Grosart: I hope on a dissimilar bill.

Mr. Vaughan: Well, let us put it this way—we hope we will see you again.

Senator Benidickson: Just one more question; I just want a reaffirmation of something I did hot get solidly. In so far as new government money is concerned, to add to your capital, exclusive of what you may have to tell us about your 1970 deficit which we will deal with through the appropriation bills, did I hear correctly that you generate internally everything that is mentioned in this bill with the possible exception of that $10 million which is in the bill of last year and of which you say you used only $8 million?

Mr. Vaughan: We did not use any. We did not borrow.

Senator Benidickson: Apart from that altogether, when we come to a section like Section 3 where you are going to spend some $229 million on the railroad side for such and such road property, branch lines and all that, you are finding that money from within the company from such things as depreciation?

Mr. Vaughan: And preferred stock.

Senator Benidickson: Yes, continuing that which is $32 million.

Mr. Vaughan: That is correct.

Senator Hollett: Is the bus system across Newfoundland now a paying concern, or is it going into debt as the railroad did?

Mr. Vaughan: I can answer that question in general terms. The bus operation is not on a profitable basis. It is negative. I imagine it was expected it would begin as a deficit operation, but the deficit is nowhere near what the deficit for the railroad operation was. I do not have the figures in my mind so I cannot say exactly what it is. Somebody has helpfully given me a sheet of paper here. I have just submitted to the House of Commons an answer to Question No. 587. I do not know whether it has been answered yet or not, but it shows the deficit as $379,000. The increase was attributable to higher wages, repair costs, modification of buses and an increase in the number of buses operating.

Senator Hollett: Is that in a year, or since it has been in operation?

Mr. Vaughan: This was the 1970 figure. It has been a tough winter all round.

Senator Grosart: Mr. Vaughan, would the company regard it as a sensible solution of this problem of authorization, provision, approval and so on if the company were required only to come to Parliament for what Senator Benidickson has called "new money"? I ask that because this is the normal procedure with other Crown corporations.

Mr. Vaughan: Yes. I would answer yes to that question, subject to a further look at it. But my instinctive answer is yes.

Senator Benidickson: From your point of view I can understand that answer, but from the point of view of a parliamentarian Iwould not find it satisfactory. I think that the opportunity is utilized more in the other place than in the Senate, to look once a year at the budget and annual report. They represent the taxpayers who are the people who put up the money. I think that annual review is helpful and necessary.

Senator Grosart: May I make this comment? My suggestion would in no way change that situation, because a whole review can be made of any Crown corporation when it comes to Parliament needing money. My suggestion would not change that in the least, and, of course, there would still be many ways by which Parliament could refer the annual report or anything else to committee. I make this suggestion because we do have a completely anomalous position here in respect of the way this particular Crown corporation reports to Parliament. This is why I think we have a confusion because of these words, "authorization", "provision", "approval" and so on. However, you have answered my question and I am satisfied with the answer.

Senator Burchill: I move that we report the bill.

The Acting Chairman: There is a motion from Senator Burchill that we report the bill. Do you want to go through it clause by clause?

Hon. Senators: No.

The Acting Chairman: Shall I report the bill without amendment?

Hon. Senators: Agreed.

Senator Benidickson: Mr. Chairman, may I point out that we did not ask the witnesses to continue reading the two documents that were supplied to us. Will they be printed as appendices to the report?

The Acting Chairman: Is it agreed, honourable senators?

Hon. Senators: Agreed.

The Acting Chairman: With the consent of the committee, they will be printed as appendices.

The committee adjourned.

APPENDIX "A"

Statement by CN witness to the Senate Committee on Transport and Communications regarding Canadian National Railways Financing and Guarantee Act, 1970.

MR. CHAIRMAN, HONOURABLE SENATORS:

Bill C-186, the *Canadian National Railways Financing and Guarantee Act, 1970*, deals with a number of financial matters related to Canadian National Railways and to Air Canada with respect to the calendar year 1970 and the first half of 1971. Its provisions follow very closely the form and principles of the corresponding 1969 Act, subject of course to the necessity of changing monetary amounts and dates and with a limited number of minor changes.

More or less in order of appearance, the main provisions of the Bill are as follows:

(i) authority in respect of capital expenditures and capital commitments by CN during 1970 and the first six months of 1971;

(ii) provisions related to the sources of moneys required to meet such expenditures;

(iii) provision for Government loans to Air Canada andor Government guarantees of obligations to be issued by Air Canada; and

(iv) the provision of moneys needed to meet any seasonal or annual income deficiencies of Canadian National or Air Canada.

Because of the technical nature of the Bill, it may be that notwithstanding Parliament's scrutiny of similar Bills on previous occasions, you would wish me to run through its several clauses in order. Should that be the pleasure of the Committee I would propose to do so at this time.

SECTION 1, of course, merely gives the Act a short title.

SECTION 2 sets out convenient definitions which have not been changed for many years.

SUBSECTION (1) of SECTION 3 covers Canadian National's capital program for 1970 and for the first half of 1971. Because of the practical necessity of programming and financing continuing capital projects from one year to another, and because delays unavoidably occur in the handling of Canadian National's Capital Budget and related legislation, it has been found necessary, and is regular practice, to cover not only the current year's programs but also their continuation and projection into the first six months of the following year.

ACCORDINGLY:

PARAGRAPH (*a*) of SUBSECTION (1) covers capital expenditures in the year 1970 to the aggregate extent of $229 million.

PARAGRAPH (*b*) of SUBSECTION (1) provides authority to make capital expenditures during the first six months of 1971 in discharge of obligations incurred prior to 1971 to an extent not exceeding $80 million, including $2 million for branch lines, and

PARAGRAPH (*c*) of SUBSECTION (1) authorizes new capital commitments prior to July 1, 1971 in respect of obligations that will come in course of payment after 1970 in aggregate amounts not exceeding $163 million.

SUBSECTION (2) of SECTION 3 authorizes Canadian National to make public borrowings of amounts needed to meet the aforesaid capital expenditures, but only in respect of branch line construction or for the purpose of repaying to the Minister of Finance any loans that may have been made by him to Canadian National for that purpose.

SUBSECTION (3) of SECTION 3 requires that the annual report of Canadian National will record the amounts af any such borrowings.

SUBSECTION (4) of SECTION 3 requires that expenditures to be made in the first six months of 1971—that is to say, expenditures for which authority is provided in subsection 3(1)(*b*)—will be included in the System's 1971 Budget.

SUBSECTION (5) of SECTION 3 requires that amounts to become payable under a capital commitment made pursuant to the authority contained in paragraph 3(1)(*c*) must be included in the Budget for the year in which payment will become due, that is to say, in the Budget for 1971 or for the subsequent year when the particular obligation will mature.

Thus each year's Budget is required to disclose all the capital expenditures to be made in that year notwithstanding that some of those expenditures will relate to commitments authorized and made in earlier years.

SUBSECTION (6) of SECTION 3 limits Canadian National's capital spending authority to the respective purposes mentioned in Section 3 and specifically provides that expenditures made under that portion of the 1969 Act (last year's Act), which covered the first six months of 1970, will be deemed to be expenditures made under subsection 3(1)(*a*) of the 1970 Act.

SECTION 4 also serves a variety of purposes being in this case related to the sources of capital funds.

Its SUBSECTION (1) authorizes and governs the issuance of the securities required in the case of any public borrowings made under subsection (2) of Section 3. SUBSECTION (2) requires that certain internally generated funds will be used to meet approved capital expenditures and SUBSECTION (3) fixes at $12 million the amount of the public securities that may be issued for the purposes of that Act (including the six months carry-over from the corresponding 1969 Act).

The $12 million figure represents branch line requirements, being the aggregate of $10 million provided for in subsection 3(1)(*a*) in respect of 1970 and $2 million provided for in subsection 3(1)(*b*) in respect of the first half of 1971. All other capital requirements of Canadian National are to be met without borrowings.

By SECTION 5 the Government is authorized to guarantee the public securities to which I have been referring.

By SECTION 6 procedures are established to govern the custody of the proceeds of sale of such securities and the application of those proceeds to the intended purposes.

The preceding six sections have dealt exclusively with Canadian National's capital requirements. SECTION 7 relates entirely to the borrowing of money by Air Canada for its own requirements and provides alternatively for loans to Air Canada out of the Consolidated Revenue

Fund (subsections (1) and (2)) or guarantees by the Government of Canada of bonds or debentures to be issued by Air Canada (subsection (3)).

By SUBSECTION (4) the aggregate principal amount of all such borrowing that may be outstanding at any one time is limited to $174 million in respect of the period January 1, 1970 to June 30, 1971 and to the Canadian dollar equivalent of 13,000,000 pound in respect of the period July 1, 1971 to December 31, 1974.

SUBSECTION (5) modifies subsection (4) by providing for a temporary overage during such short period of time as might elapse while both loans from the Consolidated Revenue Fund and guaranteed public securities issued to repay such loans might necessarily be outstanding.

SUBSECTIONS (6) and (7) of SECTION 7 govern the custody and application of the proceeds of guaranteed debentures of Air Canada.

SECTION 8 provides for the signature and effect of such guarantees of CN securities or Air Canada debentures issued under the Act.

SECTION 9 (1) provides, in respect of the Canadian National, for the making of loans out of the Consolidated Revenue Fund as an alternative to public issues. By SUBSECTION (2) it is limited to the same maximum aggregate principal amount—$12 million—as was provided for in subsection (3) of section 4; and by SUBSECTION (3) of SECTION 9 provision is made to regularize any temporary overage of outstanding amounts necessarily incidental to the issuance of public securities to retire Government loans.

The remaining few sections are carried forward unchanged, except as to effective dates, from previous F & G Acts and may not require more than passing mention.

SECTION 10 permits the consolidation of the capital requirements of the constituent companies of the Canadian National System so that, while Canadian National Railway Company occupies the focal point and would be the borrower in respect of any financing, the needs of all constituent companies may be served. In effect the budget is that of the Canadian National System not only of Canadian National Railway Company.

SECTIONS 11 and 12, which are in identical form, dealing respectively with Canadian National and Air Canada, provide that at any time prior to July 1st, 1971, when the earnings of the Company are insufficient to meet its operating requirements the Minister of Finance may advance moneys to cover the deficiency, subject to repayment to the extent possible.

SECTIONS 13 and 14 continue special financial arrangements that were originally included in the CNR Capital Revision Act, 1952 for a fixed term which has elapsed. They have, for a number of years, been contained in every CNR Financing and Guarantee Act.

SECTION 13 would relieve the Company of the payment of interest upon a sum of $100 Million.

SECTION 14 provides for the purchase by the Minister of Finance of preference stock of CN in an amount equal to 3 per cent of the System's gross annual revenues. This constitutes one of the sources of the funds required to meet the capital expenditures provided for in sub-section 3(1).

SECTION 15 is another of the category of special clauses and implements the statutory requirement that Parliament will appoint independent auditors to audit the accounts of the CN System.

APPENDIX "B"

CANADIAN NATIONAL RAILWAYS FINANCING AND GUARANTEE ACTS

A. INTRODUCTORY

This is intended to be a relatively brief review of the many aspects of the CNR Financing and Guarantee Acts in order to develop a proper overall perspective of their purposes and functions—being relevant to recurring expressions of concern that have been voiced about the timing of their presentation to Parliament.

This review assumes an understanding and acceptance of the fact that such timing is beyond the control of the companies concerned and is, from their viewpoints, partly compensated for by extension of the operation of each Act to an eighteen months period.

The references that will be found, noted in parentheses, throughout the remainder of this memorandum are to the relative clauses of Bill C-186 of the 1970-71 Session, i.e. to the proposed 1970 Act.

The present form of these Acts stems from a long line of predecessors extending backwards through the years to the early 1930's. Any comparative survey will disclose that succeeding Acts carry forward clear traces of their origins.

B. CANADIAN NATIONAL

(*a*) FINANCING—the basic purpose

While these annual Acts have several functions, the basic purpose of each is, as their short titles would suggest, to provide the statutory authorities that may be needed for financing the fiscal requirements of the "National System", which includes Canadian National Railway Company, its various directly and indirectly controlled subsidiaries, and the various properties and works that, being owned by the Crown, have been entrusted for management and operation to Canadian National.

Thus the legislation provides financing and guarantee authorities relative to Canadian National, as follows:

1. BORROWING

1.1 for current operating and income charges

1.1.1 accountable advances by the Minister of Finance as required by insufficiency of available revenues (Sec. 11)

1.2 for capital purposes

1.2.1 borrowing by means of public issues (Secs. 3(2)(*a*) and 4(1) & (3)) and the guarantee thereof by Her Majesty (Secs. 5, 6 and 8)

1.2.2 borrowing from the Minister of Finance (Secs. 3(2)(*a*) and 9(1) & (2))

1.2.3 public borrowings to repay the loans referred to in item 1.2.2 (Secs. 3(2)(*b*) and 4(1) & (3) and 9(3)) and the guarantee thereof by Her Majesty (Secs. 5, 6 and 8)

—it is to be noted that in recent years the amount of Canadian National's authority to borrow for capital purposes has been relatively small (Secs. 4(3) and 9(2)—$12 million), in marked contrast to its requirements and authority during the post-War period of plant renewal.

2. EQUITY

2.1 purchase by the Minister of Finance of preferred stock of Canadian National (Sec. 14), providing additional funds for capital purposes.

INTERNALLY GENERATED FUNDS

3.1 application towards capital expenditures of amounts provided for depreciation and debt discount amortization.

—although specific statutory authority for such application is not necessary, such a provision was inserted in the Act of 1950 to satisfy a desire of institutional lenders; it has been carried forward in subsequent Acts in order to reflect a corresponding item in the System's approved capital budget and to complement the other sections which afford sources of capital funds, as referred to above.

(*b*) CAPITAL EXPENDITURES

Statutory authority and control respecting capital expenditures by Canadian National is to be found in Section 37 of the Canadian National Railways Act, chapter 29 of the Statutes of 1955. Under that section Canadian National must submit annual estimates of its requirements for capital expenditures, etc. Approval of the budget, in which these estimates are contained, by the Governor in Council—under that section and section 80 of the Financial Administration Act—provides full authority for the Company to implement its capital program.

Nevertheless the current practice is that the annual Financing and Guarantee Acts should also authorize the same expenditures. Why? The answer is partly historical and partly a matter of the manner of presentation desired by those having responsibility for the form of the legislation.

Prior to 1951 CNR Financing and Guarantee Acts did not include any counterpart of their present provisions respecting capital expenditures (Sec. 3(1)). Although that old practice did not occasion any doubt as to CN's authority to make such expenditures, practical problems did from time to time arise in arranging loans of the amounts required to meet them because, with the spending authority flowing from one Act and the borrowing authority contained in another, it was very difficult to establish a positive relation between the one and the other to the satisfaction of prospective lenders. A slightly different but equally vexatious problem, since resolved, related to the exercise of the Company's necessary powers of expropriation. Accordingly, and to avoid those problems, the form of the annual Financing and Guarantee Acts was modified to include specific Parliamentary authority for the System's program of capital expenditures in categories and amounts which would reflect and summarize the budget approved by the Governor in Council. This was first done in Chapter 45 of the Statutes of 1951.

While the problems referred to in the preceding paragraph are no longer of the same practical importance as formely the practice of duplicating CN's authority to make capital expenditures, by its inclusion in the subject Acts, has been continued—presumably, if for no other reason than to bring together in one place the complete financial picture of CN's capital programs. In any event so long as Parliament is required to consider the financing aspects of the annual legislation the inclusion of such duplicate spending authority would not seem to be unduly burdensome—although its presentation to Parliament late in any calendar year may tend to provoke adverse comments.

(*c*) OTHER MATTERS

In addition to the matters referred to above these annual Acts also afford the means of providing for certain other necessary or desirable statutory provisions, as follows:

1. additional requirements respecting annual reports and budgets of Canadian National (Secs. 3(3) to (6))

2. clarification of the parent company's power to aid other System entities (Sec. 10)

3. annual extension of an interest moratorium on a specific obligation of the Company to the Government (Sec. 13), and

4. annual appointment of independent auditors (Sec. 15), as required by Section 38 of the CNR Act.

C. AIR CANADA

(*a*) FINANCING

For historical reasons, Government support of Air Canada's financing has also been provided for through these Acts. Such authorities, which follow generally the treatment of the sections that deal with corresponding requirements of Canadian National, are as follows:

1. borrowing for current operating and income charges by means of accountable advances from the Minister of Finance (Sec. 12)

2. borrowing for capital purposes by means of loans from the Minister of Finance (Secs. 7(1) & (2) & (4))

3. guarantees by Her Majesty of debentures to be issued by the Company to provide amounts required for capital purposes or to repay loans referred to in the preceding sub-paragraph 2 (Secs. 7(3) & (4) and 8).

(*b*) OTHER MATTERS

Indirectly, the appointment of independent auditors for Canadian National, as previously referred to, serves the same purpose in respect of Air Canada by virtue of Section 13 of the Air Canada Act which provides "the accounts and financial transactions of the Corporation shall be audited by the auditor appointed by Parliament to audit the accounts of Canadian National Railways."

D. CONCLUSION

As coordinated legislative measures the subject Acts serve a variety of useful and necessary purposes which, if not dealt with in this form, would have to be provided for in other statutory measures. Simplicity of presentation has, admittedly, been sacrificed for the sake of consolidation into a single Act. However that is not to say that the choice is wrong; it is probably most economical in terms of Parliamentary time—unless permanent legislation were to be substituted.

Montreal, 7 December 1970.

Published under authority of the Senate by the Queen's Printer for Canada

Available from Information Canada, Ottawa, Canada.

CA1 YC 19
-T61

THIRD SESSION—TWENTY-EIGHTH PARLIAMENT

1970-71

THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING SENATE COMMITTEE ON

TRANSPORT AND COMMUNICATIONS

The Honourable HEDARD J. ROBICHAUD, *Acting Chairman*

No. 2

THURSDAY, MARCH 11, 1971

LIBRARY
APR - 7 1971

First Proceedings on Bill C-2,

intituled:

"An Act to amend the Canada Shipping Act"

(Witnesses:—See Minutes of Proceedings)

23612—1

THE STANDING SENATE COMMITTEE ON TRANSPORT AND COMMUNICATIONS

The Honourable J. Campbell Haig, *Chairman*

The Honourable Senators:

Aseltine	Macdonald (*Cape Breton*)
Blois	*Martin
Bourget	McElman
Burchill	McGrand
Connolly (*Halifax-North*)	Michaud
Denis	Molson
*Flynn	Nichol
Fournier (*Madawaska-Restigouche*)	O'Leary
Haig	Pearson
Hayden	Petten
Hollett	Rattenbury
Isnor	Robichaud
Kinley	Smith
Kinnear	Sparrow
Langlois	Welch

Ex officio members: Flynn and Martin

(Quorum 7)

Order of Reference

Extract from the Minutes of the Proceedings of the Senate, March 10th 1971.

"Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Petten, seconded by the Honourable Senator Eudes, for the second reading of the Bill C-2, intituled: "An Act to amend the Canada Shipping Act".

After debate, and—
The question being put on the motion, it was—
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Petten moved, seconded by the Honourable Senator Kickham, that the Bill be referred to the Standing Senate Committee on Transport and Communications.

The question being put on the motion, it was—
Resolved in the affirmative."

ROBERT FORTIER
Clerk of the Senate

23612—1½

Minutes of Proceedings

Thursday, March 11th, 1971
(2)

Pursuant to notice the Standing Senate Committee on Transport and Communications met this day at 11.40 a.m. to consider the Bill C-2, intituled: "An Act to amend the Canada Shipping Act".

Present: The Honourable Senators Robichaud (*Acting Chairman*), Burchill, Denis, Hollett, Kinnear, Langlois, Michaud, Pearson, Smith and Sparrow. (10).

In attendance: Mr. Pierre Godbout, Assistant Law Clerk and Parliamentary Counsel.

On Motion it was resolved to print 800 copies in English and 300 copies in French of these Proceedings.

The following witnesses were heard:

DEPARTMENT OF TRANSPORT: Mr. R. R. Macgillivray, Director, Marine Regulation Branch,

Mr. Jean Brissett, Advocate, representing the London Group of Protection and Indemnity Associations, Montreal, Que.

Further consideration of the Bill was adjourned.

At 12:10 p.m. the Committee adjourned until Wednesday, March 17th, at 10 o'clock a.m.

ATTEST:

Aline Pritchard
Clerk of the Committee

The Standing Senate Committee on Transport and Communications Evidence

Ottawa, Thursday, March 11, 1971

[*Text*]

The Standing Senate Committee on Transport and Communications, to which was referred Bill C-2, to amend the Canada Shipping Act, met this day at 11.45 a.m. to give consideration to the bill.

Senator Hédard Robichaud (*Acting Chairman*) in the Chair.

The Acting Chairman: Honourable senators, we now have before us Bill C-2, to amend the Canada Shipping Act, and I understand we have as witnesses, Mr. Jean Brisset, Q.C., of the firm of Brisset, Reycraft, Bishop and Davidson, 620 St. James Street West, Montreal, and Mr. J. J. Burke representing the Canadian Chamber of Shipping. I understand Mr. Burke is acting purely as an observer at this stage. We also have with us Captain Hurcomb, representing the Dominion Marine Association who will also have a few remarks to make following Mr. Brisset. Mr. R. R. Macgillivray, Director of the Marine Regulations Branch, Department of Transport is present, and I will ask him if he has any statement to make regarding this bill?

Mr. R. R. Macgillivray, Director, Marine Regulations Branch, Department of Transport: Mr. Chairman and honourable senators, I am in your hands.

The Acting Chairman: Would you mind giving a very brief explanation of the bill?

Mr. Macgillivray: There is very little that I can add to what Senator Hollett said in the chamber on Tuesday evening last. The bill represents a change in emphasis in the Canada Shipping Act. Until now we have been interested mostly in the safety of life at sea, the safety of ships and the people and property on board them and this is a switch in emphasis and we are turning to look after the interests of the people who may be affected by ships, particularly in the matter of pollution. It is a long bill and it has a variety of provisions.

There are those provisions which are almost repetitious of what is already in the act on the matter of wilful and negligent discharge of pollutants, which are handled principally in section 737(2) and parts of sections 739, 741 and 769.

Another aspect is the safety provisions designed to prevent accidents to ships and thereby control pollution, and to minimize damage if an accident does occur, and also to enable us to take prompt and effective remedial measures when a large spill occurs.

A great deal of this objective will be achieved by regulations made under section 739. We already have in the Shipping Act, in section 410 particularly, wide powers of regulation in the Governor in Council in respect of the construction and equipment of ships. Section 739 provides for a considerable extension of these powers and regulations, in relation to technical matters relating to ships.

There are important provisions on liability. These provisions start at section 743 on page 11, and on these I am sure you are going to hear from some of the witnesses this morning. The principal change in the liability matter is that the bill will provide for owners of ships, and possibly the owners of cargo aboard them, to be liable for pollution damage without proof of fault on the part of the ship owner. There are some exceptions to this liability, which are set forth in section 744(1), but to a great extent the bill provides that wherever a pollution incident occurs the ship carrying the pollutant is automatically liable.

As a concommitant of that, there are provisions to limit the liability of the ship owner. The liability of ship owners for damage now, once it is proven that they were at fault, is limited to $67 per ton of the ship's tonnage. It is expressed in French gold francs in the act, that is for international uniformity, but it comes to about $67 per ton on the ship's tonnage. For pollution damage this is to be doubled, to roughly $134, but with an overall limit of $14 million per incident, regardless of the size of the ship.

Senator Pearson: What amount of pollution do you anticipate, before you take action against any vessels? What percentage of pollution would they discharge?

Mr. Macgillivray: The person who suffers the pollution would doubtless take action as soon as he suffered enough damage to make it worth his while taking action.

Senator Pearson: Supposing pollution is within nine miles, who gets the damage there?

Mr. Macgillivray: If there is oil on the sea, out at sea, and it is not damaging anyone, then no one has a claim for damages. But if the Government undertakes to clean up that oil in anticipation of its causing damage, then this bill provides that the Government will have a claim in damages for that clean-up cost.

In actions in the past, where the Government has stepped in to contain oil or remove it from a wreck, in

order to prevent its causing damage to someone, we proceeded as a volunteer and we have had no claim for these expenses.

Senator Hollett: In connection with the ERCO disaster, did your department have to pay any damage compensation to the fishermen?

Mr. Macgillivray: No sir, our department and our legislation deals only with ships and shipping. Therefore, we do not become involved in pollution matters. This bill does not deal with any matters relating to pollution arising from a shore based installation.

Senator Burchill: I would like to ask one question. If a vessel comes into a port and discharges oil, it may be an accident, as happens in a great many cases, who is the responsible officer in that port? I am speaking particularly of a port in the Maritimes, in Newcastle or Miramichi. This happened several times lately. Oil has been discharged from a vessel. Who is the proper officer in that port in the harbour to take action against that vessel? I see a pollution prevention officer is to be appointed. Does that mean that an officer will be appointed and stationed in the port?

Mr. Macgillivray: No, sir. At the present time when an accident happens, in Newcastle or in some other place where we do not have a Transport Department office, the dischargeable oil is required to be reported, under the regulations, to our nearest office, which is in Saint John. We get a report usually, if the ship owner is a responsible person, very quickly.

Senator Burchill: Who reports that?

Mr. Macgillivray: The master of the ship.

Senator Burchill: But where is the compulsion on him to report it?

Mr. Macgillivray: There is a requirement in the regulations.

Senator Langlois: Mr. Macgillivray, has the special branch so far been doing the investigation of these accidental discharges of oil into the harbours?

Mr. Macgillivray: Yes. It is normal, and indeed I think the regulations require it, that the report be made to the minister when a spill occurs either accidentally or wilfully. These reports come in and our local offices are usually on the spot very quickly in order to investigate them. Often charges are laid.

The Acting Chairman: Mr. Macgillivray, what Senator Burchill has in mind is something different. It is vessels that do it purposely in changing their oil.

Senator Burchill: Suppose there is a spill and everybody in the community knows that the river is full of the oil and they suspect that a certain vessel is responsible, but nobody takes any action.

Mr. Macgillivray: If they report it to our office in Saint John we will have someone up there taking samples from the water and from the ship's bilges within a very short space of time.

Senator Burchill: You say the captain is supposed to report it, but if he denies that it comes from his vessel he certainly is not going to report it.

Mr. Macgillivray: That is true. But if we prove that it did come from his vessel then he is subject to a penalty of $5,000.

Senator Burchill: But he is the only one who has to report it. That is my point.

Mr. Macgillivray: We do encourage everybody to report oil spills, and we have had from time to time good co-operation from such people as air line pilots who report spills from ships off the coast. We also do aerial surveys of the St. Lawrence by helicopter flights and fixed flights, and we have the coastal command aircraft who are supposed to report the spills to us. But when spills are in port we normally expect that somebody is going to see them rather quickly and let us know quickly.

Senator Langlois: Mr. Macgillivray, could you give us some idea of the number of prosecutions you have taken under the existing legislation? I know you have had several just in the St. Lawrence River.

Mr. Macgillivray: I think they are running at the rate of about 20 a year now. Actually, I suppose it must be about 50 in the past year.

Senator Langlois: I would say that you have about that many on the St. Lawrence alone.

Mr. Macgillivray: We might have that many on the St. Lawrence, yes, and the limit of the fines has been increased from $1,000 to $5,000, and we now get quite a few $5,000 fines. This bill will provide that the fine can go up to $100,000.

Senator Burchill: But I still make the point that there is nobody directly responsible in the area. The harbour master or the pilot master or anybody else could be made responsible, but nobody has the responsibility of communicating with the Department of Transport, if the captain does not.

Mr. Macgillivray: There is no duty laid on them, but we do encourage them to communicate. We encourage them and the R.C.M.P. and everybody with whom we come into contact to inform us immediately so that we can get there and investigate.

Senator Burchill: But there is no direct official.

Mr. Macgillivray: No, sir. I do not think we will be able to staff ourselves to have pollution control prevention officers.

Senator Burchill: But I thought it might be the duty of the harbour master.

Mr. Macgillivray: He could be designated a pollution prevention officer under this legislation.

The Acting Chairman: You mean under the regulations of this legislation?

Mr. Macgillivray: The bill provides for pollution prevention officers to be appointed, and any person can be appointed a pollution prevention officer with certain limited powers.

The Acting Chairman: Do you not think it would be a good idea to have every harbour master appointed? After all, they have a responsibility at each port.

Senator Burchill: These rivers are just a mess, are they not? Mr. Chairman, you know what is happening, and it is vitally important to protect the rivers. But I have seen oil drifting around in a river and nobody seems to know where the oil comes from or anything about it.

Senator Hollett: Mr. Macgillivray, on page 23 of the bill, clause 757(1)(b) provides:

> (b) in respect of each ton of oil shipped from any place in Canada in bulk as a cargo of a ship,

Suppose we substituted for the word "oil" the word "pollutant". It would then read:

> (b) in respect of each ton of pollutant shipped...

and so on, and then in every place where the word "oil" appears in that clause the word "pollutant" is be substituted for it, would that not be better than just having the word "oil" in there? That suggestion for amendment was made to me and I pass it on to you for your consideration as an expert.

Mr. Macgillivray: Such an amendment was moved in the House of Commons, sir.

Senator Hollett: Oh, was it? I did not know that.

Mr. Macgillivray: The committee of the other place considered such an amendment and, in lieu of the amendment, a paragraph (c) was added to clause 758 on page 25. And if you will look at page 25, line 8, you will see what the addition says.

Senator Langlois: Mr. Chairman, I would refer the members of the committee to the definition of "oil" in the interpretation clause of the bill on page 2, where it says in paragraph (h):

> (h) "oil" means oil of any kind or in any form and, without limiting the generality of the foregoing, includes petroleum, fuel oil, sludge, oil refuse and oil mixed with wastes but does not include dredged spoil;

Mr. Macgillivray: When we first conceived the idea of a compensation fund we were thinking principally of oil, because so far as I am aware, in Canada at least, the only pollution that we know of that has been caused by ships has been by means of oil.

About 60 per cent of the ocean commerce now is oil cargoes, and I think the percentage is going up. Moreover, the likelihood of pollution danger from any source would indicate that it is most likely to be from oil, because quite apart from the tonnage that is carried as cargo, virtually every ship on the seas is now propelled by oil power by one means or another. So that this is the major part of the problem. It is the type of pollution that we do see from day to day and it is what people are suffering from.

Oil is an easily identifiable substance for which we can assess what will be the impact of a levy.

If we were to put in the word "pollutant" instead of the word "oil" and just say that this is on every ton of pollutant, then if we went back to the definition of "pollutant" you would find that you were covering practically every ton of every cargo that comes in. Because everything can be a pollutant. The cargo of sugar dumped into the Mississippi has killed the fish downstream by using up the oxygen. Virtually every cargo coming through our waters would be a pollutant, and you would have to try to determine an appropriate amount to be paid into the fund in respect of that cargo, bearing in mind the likelihood of that cargo's causing pollution damage.

We have not yet figured out a scheme on this. Instead of holding up the idea of a compensation fund or a claims fund, this amendment was made in the committee of the other place by adding paragraph (c) to section 785 on page 25, which allows the Governor in Council to bring such a régime into effect by regulation at such time as we are able to work out a scheme.

Senator Hollett: Thank you for your answer. I did not notice paragraph (c). When was that put into the bill?

Mr. Macgillivray: That was added by the committee of the other place when they reported the bill.

Senator Langlois: Referring to page 2, my interpretation is that the definition is broad enough to include even whisky imported from England.

Senator Hollett: That is poison, is it not?

The Acting Chairman: What about rum from Newfoundland?

Senator Langlois: Look at the definition of "pollution".

Senator Pearson: In the past an accusation was made by a member of the United States government that on the west coast we have no right to complain about oil shipments from Valdez, or possible shipments. At the present time there are going along the coast of British Columbia some of the oldest bottoms carrying oil. Is this right? Some of the oldest bottoms carrying oil are going along the Canadian coast, and we have never made any complaint about it. Have we no control over the oil cargo ships that come into port, or are anywhere near our coasts?

Mr. Macgillivray: Until this bill becomes law there is nothing in the Canada Shipping Act that allows us to tell a ship that it may not come into our ports or our waters, no matter how unsafe we may think it is. Two or three years ago a tanker caught fire in the Pacific; it was

abandoned by the crew and salvaged by a Pacific coast salvage company, who got lines aboard it and started towing for Victoria harbour. It was only after great persuasion that we arranged for them to tow it into a place up the coast, which was mutually agreed upon, which the fisheries people thought was safe enough, and there they transferred the cargo. There is nothing in the law authorizing any Canadian official to say a ship may not come in, and we are curing that in this bill.

Senator Pearson: Like these old ships on the Pacific now?

Mr. Macgillivray: Yes.

Senator Pearson: Thank you.

The Acting Chairman: May we now hear from Mr. Brisset. If there are any further questions we can come back later to Mr. Macgillivray.

Mr. Jean Brisset, Q.C. Counsel, London Group of Protection and Indemnity Associations: Mr. Chairman, honourable senators, first of all I want to thank you for the privilege of appearing before you. I am authorized to speak to you on behalf of the London Group of Protection and Indemnity Associations. These associations cover or insure the legal liability of shipowners, more particularly for pollution damage or pollution claims. The members of these associations own approximately 170 million tons of the merchant fleets of the world, which is well over 80 per cent. They insure, in particular, practically all, if not all, the Canadian lake fleet, and the few foreign-going ships still flying the Canadian flag. As insurers, of course, they are principally, and I might even say only, interested in the liability aspects of this legislation, and my remarks will be confined to that.

Unfortunately, I was advised only yesterday of the hearings this morning and I have no prepared statement. I apologize if my statement to you is not as polished as it should be. However, I appeared before the committee of the other place and presented a written statement, of which I have copies, and also copies of the transcript. I am quite prepared to distribute these copies if members of the committee would like to have them.

The Acting Chairman: You may do so, certainly.

Mr. Brisset: Should I do it now?

The **Acting Chairman:** If there is no objection you may distribute them now, or later if you like.

Mr. Brisset: It may be of interest to honourable senators to have this statement now, because as an appendix I have reproduced the IMCO Brussels Convention, to which I will refer during the course of my remarks. This is the convention on civil liability for all pollution damage, which was drafted at an international diplomatic meeting in Brussels in November, 1969, which the Minister of Transport attended. I have French and English copies which I would like to distribute.

As I indicated earlier, there was an international conference in Brussels in November, 1969, when a draft convention was prepared on the issue of civil liability for pollution damage. The Minister of Transport was not satisfied with this convention, and informed those concerned that Canada would likely go it alone, which is what the Government did in introducing this legislation in the other place last fall.

However, there were lengthy hearings before the committee of the other place, in which most of those who appeared stated that it would perhaps be more advisable for the Canadian Government to work in co-operation with other maritime countries on the international level. Finally very important amendments were made in the bill as originally introduced, to incorporate in it many of the specific provisions of the IMCO Brussels convention that had been drafted in November, 1969.

When the bill had third reading the minister addressed the other place, and at this stage I should like to refer to one passage of his speech, because I find in it something that will support the suggestions I will be making to you. I am quoting from page 3853 of the House of Commons *Debates*, March 1, 1971, when the minister said:

> For obvious reasons I cannot give particulars, but I can assure the house of a definite movement toward more international co-operation. We have indicated our anxiety to go along with this by establishing bases in this bill which will put us on all fours with the Brussels convention. We are remaining within the international community rather than taking unilateral action. I do not suggest that it is possible or even likely that we will get everything we want within a year or two, but I have not the slightest doubt that the weight of public opinion is with us.

All I am going to say to you is that in the light of the already substantial amendments made to the original bill, all that is required to bring this bill more on all fours with the convention is a bit of tidying up, because there are some procedural aspects which should have been taken care of and which will not alter the substance of the present bill, but which we feel are necessary so that we may have a complete package.

I should like, as my first remark, and dealing with my first suggestion, to direct your attention to section 744(4) on page 14. This is an enactment of substance which states, and I quote:

> (4) Notwithstanding any other provision of this Act, the aggregate amount recoverable directly from
>
> (a) the owner of ship, or
>
> (b) the owner of a ship that carries a pollutant in bulk and the owner or owners of that pollutant, as the case may be, in respect of each separate incident that gives rise to civil liability under section 743 is,
>
> (c) where the incident occurs without actual fault or privity on the part of the person or persons described in paragraph (a) or (b)...

This is the owner of the ship or the owner of the cargo, and then the amounts are set out, 2,000 gold francs for each ton and 210,000,000 gold francs as a maximum.

These amounts are quite large; 210,000,000 gold francs is the equivalent of slightly more than $14 million. So you have an enactment which says that the liability of the owner is limited to these sums. But there is nothing in the act which provides for the situation where an accident occurs and the owner or the guarantor, the insurer, wants to invoke the privilege of limiting his liability and depositing, as is normally done in other circumstances, the amount of his liability in court and having the court distribute the amounts so deposited amongst all claimants in proportion to their claims.

Under the provisions of the Canada Shipping Act which also relate to limitations of liability in the case of an accident involving losses and damages other than pollution damage, a ship owner is entitled also to limit his liability, the limit is lower—as Mr. Macgillivray has explained it is about half—in fact it is exactly half of 2,000 gold francs being only 1,000 gold francs. But then Section 658 of the Canada Shipping Act as amended in 1961, Chapter 32, 9-10 Elizabeth II, reads as follows:

> 658. (1) Where any liability is alleged to have been incurred by the owner of a ship in respect of any loss of life or personal injury, any loss of or damage to property or any infringement of any right in respect of which his liability is limited by section 657...

This is the article which is similar to section 744(4) where it says:

> ...and several claims are made or apprehended in respect of that liability a judge of the Exchequer Court may, on the application of that owner, determine the amount of his liability and distribute that amount rateably among the several claimants; such judge may stay any proceedings pending in any court in relation to the same matter, and he may proceed in such manner and subject to such regulations as to making persons interested parties to the proceedings, and as to the exclusion of any claimants who do not come in within a certain time, and as to requiring security from the owner, and as to payment of any costs, as the Court thinks just.

This is something we do and I have already done it twice this year in the case of a collision between two ships involving heavy damages. We went to the Court and said, "We acknowledge we are liable. This is the limit of our liability under the act. We are prepared to deposit this amount. Here it is." And we asked the Court to distribute it among all claimants in ratio to their claim. It is a simple procedure, and the Court has rules and regulations which set out how you must proceed. You must advertise in the papers and so forth. This is covered by the rules of Court.

Senator Hollett: They do that under that act, do they?

Mr. Brisset: Under the same act, the Shipping Act, but in the case of a pollution claim, there is nothing in the act which permits the same procedure to be followed. It could be done by reference; it could be done by inserting a similar provision in that particular part of the act. What would happen in the case of a pollution disaster? I am the ship owner; I am insured; I acknowledge that I am liable and I am liable, say, up to $14 million and there are a number of claims. I expect that the claims will exceed $14 million, so what am I going to do? I will be sued by hundreds of thousands of persons. Will the first to sue be paid first and then those who sue last have no money left? Some procedure has to be adopted in order to permit a reasonable and equitable way of disposing of the issue, in other words of the fund which the owner or the insurer is prepared to put up.

The Court, of course, would have to decide whether he is entitled first of all to limit, and what exactly is the amount of his limitation according to the Act depending on the tonnage of the ship. But these things are done all the time in Court.

So we say this is a lack in the present legislation which should be taken care of. If you refer to the text of the convention which is appended to our statement presented to the committee of the other place, there is a procedural provision to the effect that the owner in the case of disaster can apply to the Court, deposit his funds and the Court will then distribute it. So we submit that some similar provision either by way of reference or by inserting a provision somewhat similar to one I have read to you in this part of the Act would really complete the package.

The Acting Chairman: Mr. Brisset, do we understand that you have made similar representations to the other place when the committee there was sitting?

Mr. Brisset: Yes.

Senator Hollett: And nothing was done?

Mr. Brisset: Nothing.

Senator Hollett: It sounds reasonable.

Mr. Brisset: They did change the substance. They allowed, for instance, the number of defences open under the convention, but they did not deal at all, and I do not know why, with the procedural aspect of the problem.

Senator Pearson: There are funds deposited in Court and a number of claims are made against you. Now, let us suppose that the Court finds against you and the fund is not large enough to meet all those claims, what happens then?

Mr. Brisset: When we apply to the court for limitation of liability in an ordinary action, we have first of all to satisfy the court that we come within the terms of the statute and are entitled to limit liability. This is the first issue.

Once this is decided, the court will render a decree and say, "You, the owner, are entitled to a limit, upon deposit of the fund." It is at that stage that the fund is deposited. Before, only security was given to guarantee that the fund will be deposited once the decree is rendered.

These are procedural matters already taken care of by the rules of the court.

Senator Langlois: May I ask Mr. Macgillivray as to whether the Government took an official position in regard to the suggestion, before the other committee?

Mr. Macgillivray: I am afraid I would have to ask for some time to consult with the Department of Justice on this. I brought the...

Senator Langlois: Was an official position taken before the committee of the house?

Mr. Macgillivray: On this statement?

Senator Langlois: On the suggestion?

Mr. Macgillivray: No, sir.

Senator Langlois: My question was limited to that.

The Acting Chairman: It is ten minutes after 12. There are other witnesses who wish to appear, and in view of the length of the statements and as we do not wish to curtail them in any way, and in order to give a chance to honourable senators to ask proper questions, we will adjourn until Wednesday morning next at 10 o'clock.

The committee adjourned.

Published under authority of the Senate by the Queen's Printer for Canada

Available from Information Canada, Ottawa, Canada.

CA1 YC 11
-T72

THIRD SESSION—TWENTY-EIGHTH PARLIAMENT

1970-71

THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING SENATE COMMITTEE ON

TRANSPORT AND COMMUNICATIONS

The Honourable HEDARD J. ROBICHAUD, *Acting Chairman*

LIBRARY
MAR 10 1971

No. 3

WEDNESDAY, MARCH 17, 1971

Second Proceedings on Bill C-2,

intituled:

"An Act to amend the Canada Shipping Act"

(For list of witnesses and briefs submitted—see Minutes of Proceedings)

23616—1

THE STANDING SENATE COMMITTEE ON TRANSPORT AND COMMUNICATIONS

The Honourable J. Campbell Haig, *Chairman*

The Honourable Senators:

Aseltine	Macdonald (*Cape Breton*)
Blois	*Martin
Bourget	McElman
Burchill	McGrand
Connolly (*Halifax-North*)	Michaud
Denis	Molson
*Flynn	Nichol
Fournier (*Madawaska-Restigouche*)	O'Leary
Haig	Pearson
Hayden	Petten
Hollett	Rattenbury
Isnor	Robichaud
Kinley	Smith
Kinnear	Sparrow
Langlois	Welch

Ex officio members: Flynn and Martin

(Quorum 7)

Order of Reference

Extract from the Minutes of the Proceedings of the Senate, March 10th, 1971.

"Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Petten, seconded by the Honourable Senator Eudes, for the second reading of the Bill C-2, intituled: "An Act to amend the Canada Shipping Act".

After debate, and—
The question being put on the motion, it was—
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Petten moved, seconded by the Honourable Senator Kickham, that the Bill be referred to the Standing Senate Committee on Transport and Communications.

The question being put on the motion, it was—
Resolved in the affirmative."

Robert Fortier,
Clerk of the Senate.

23616—1½

Minutes of Proceedings

Wednesday, March 17th, 1971.
(3)

Pursuant to adjournment and notice the Standing Senate Committee on Transport and Communications met this day, at 10.00 a.m., to further consider the Bill C-2, intituled: "An Act to amend the Canada Shipping Act".

Present: The Honourable Senators Robichaud (*Acting Chairman*), Bourget, Burchill, Denis, Flynn, Hayden, Hollett, Kinley, Langlois, McElman, McGrand, Michaud, Nichol, Peten, Rattenbury and Smith—(16).

Present but not of the Committee: Honourable Senator Macnaughton.

In attendance: Mr. Pierre Godbout, Assistant Law Clerk and Parliamentary Counsel.

On Motion of the Honourable Senator Langlois, it was Resolved to print 800 copies in English and 300 copies in French of these Proceedings.

The following witnesses were heard:

LONDON GROUP OF PROTECTION AND INDEMNITY ASSOCIATIONS:

Mr. Jean Brisset, Q.C., Advocate.

DEPARTMENT OF TRANSPORT:

Mr. R. R. Macgilligray, Director, Marine Regulations Branch.

PETROLEUM ASSOCIATION FOR CONSERVATION OF THE ENVIRONMENT—(IMPERIAL OIL)—

Mr. J. L. Lewtas, Q.C., Counsel.

TEXACO CANADA LIMITED:

Mr. A. Galipeault, Legal Counsel.

BP OIL LIMITED:

Mr. Jean Langelier, Q.C.

GULF OIL CANADA LIMITED:

Mr. J. C. Phillips, General Counsel

At 12.40 p.m. the Committee adjourned to the rise of the Senate this day.

At 4.05 p.m. the Committee met for further consideration of the said Bill.

Present: The Honourable Senators Robichaud (*Acting Chairman*), Blois, Bourget, Burchill, Flynn, Hollett, Kinley, Kinnear, Macdonald (*Cape Breton*), McElman, McGrand, Michaud, Pearson, Petten, Rattenbury, Smith—(16).

Present but not of the Committee: The Honourable Senator Inman.

In attendance: Mr. Pierre Godbout, Assistant Law Clerk and Parliamentary Counsel.

The following witnesses were heard:

DOMINION MARINE ASSOCIATION:

Captain P. R. Hurcomb, General Manager.

CANADIAN CHAMBER OF SHIPPING:

Mr. J. J. Burke, General Manager.

DEPARTMENT OF TRANSPORT:

Mr. R. R. Macgillivray, Director, Marine Regulations Branch.

The briefs listed hereunder were ordered to be printed as appendices to these proceedings.

Appendix "A": Proposed amendments submitted by the LONDON GROUP OF PROTECTION AND INDEMNITY ASSOCIATIONS.

Appendix "B": Brief submitted by Imperial Oil consisting of a document filed by PACE (PETROLEUM ASSOCIATION FOR THE CONSERVATION OF THE CANADIAN ENVIRONMENT) to a Special Committee of the House of Commons on Environmental Pollution, and proposed amendments to Bill C-2.

Appendix "C": Brief submitted by BP OIL LIMITED to which is attached a copy of the "CRISTAL" Fund.

Appendix "D": Brief submitted by GULF OIL CANADA LIMITED.

Appendix "E": Brief submitted by the CANADIAN CHAMBER OF SHIPPING.

Appendix "F": Brief submitted by the INTERNATIONAL CHAMBER OF SHIPPING without said Organization being heard.

At 5.40 p.m. the Committee adjourned for further consideration of the said Bill until Wednesday next, March 24th, at 10.00 a.m.

ATTEST:

Aline Pritchard,
Clerk of the Committee.

The Standing Senate Committee on Transport and Communications

Evidence

Ottawa, Wednesday, March 17, 1971.

[*Text*]

The Standing Senate Committee on Transport and Communications, to which was referred Bill C-2, to amend the Canada Shipping Act, met this day at 10 a.m. to give further consideration to the bill.

Senator Hédard Robichaud (*Acting Chairman*) in the Chair.

The Acting Chairman: Honourable senators, we have a quorum, so we shall proceed, with our consideration of Bill C-2, to amend the Canada Shipping Act. Before we proceed I shall name those who are to appear before us as witnesses this morning. If we cannot complete our deliberations by 12.30 p.m. we might have to meet this afternoon, but this will be decided later this morning.

Appearing before us this morning is Mr. Jean Brisset, representing the London Group of Protection and Indemnity Associations, who commenced his presentation at the last meeting but was prevented from completing it by the adjournment. The second witness will be Mr. J. L. Lewtas, Legal Counsel, representing the Petroleum Association for Control of Environment, Imperial Oil. The third witness will be Mr. A. Galipeault, Legal Counsel, representing Texaco Canada Limited, of Montreal. The fourth witness will be Mr. Jean Langelier, representing BP Oil Limited, and he will likely be accompanied by Mr. R. B. Keefler. The fifth witness will be Captain P. R. Hurcomb, General Manager, Dominion Marine Association. The sixth witness will be Mr. J. J. Burke, General Manager, representing the Canadian Chamber of Shipping, Ottawa. And the last witness will be Mr. J. C. Phillips, General Counsel, Gulf Oil Canada Limited, of Toronto.

I shall now ask Mr. Brisset to come forward and proceed with his presentation.

Mr. Jean Briset, Q. C., Counsel, London Group of Protection and Indemnity Associations: Mr. Chairman and honourable senators, if I may briefly summarize what I said at the last meeting, I pointed out that this legislation recognizes the right of the owner of a ship or the owner of a pollutant to limit liability, but that the legislation does not contain any provision indicating how such an owner can proceed to so limit his liability, and I recommended that there should be a provision in the bill, patterned on section 658 of the Canada Shipping Act, permitting an owner to apply to the court for a decree of limitation, and, if he is entitled to limit, to deposit the limited fund, the court then being authorized to distribute this fund pro rata amongst all the claimants.

As far as the excess of the claims that are not paid out of the fund is concerned, then they would be paid out either from the pollution fund created under this legislation, or they would be paid out of the voluntary fund created by the oil companies, or out of the international fund created under the Brussels Convention of 1969, when it comes into effect and if it is adhered to by Canada. I am advised that this additional fund is in the amount of $30 million.

I have taken it upon myself, with some diffidence, to prepare the text of the amendments which I would propose for your committee's consideration. I believe copies have been distributed this morning, both in French and in English.

First of all, I would like to direct your attention to the first amendment, which deals with the issue I have just raised. It could be done by adding the following subsection to section 744. (See Appendix "A")

Section 744 is the section which provides under subsection (4) for the limitation of liability and sets out what this limitation is.

Subsection (6), which I propose as an amendment, is patterned on article 658 of the Canada Shipping Act as amended by 9-10, Elizabeth II, chapter 32, section 33. It would read as follows:

> (6) Where any civil liability is alleged to have been incurred under section 743 by the person or persons described in paragraphs (a) or (b) of subsection (4) hereof...

That is, the owner of the ship or the owner of the pollutant...

> and where such liability is limited under paragraph (c) of said subsection (4) and several claims are made or apprehended in respect of that liability, a judge of the Federal Court may,...

I have changed the text here. The former text read "a judge of the Exchequer Court". We have now a Federal Court to replace the Exchequer Court.

> ...a judge of the Federal Court may, on the application of that person or persons, determine the amount of his or their liability and distribute that amount rateably among the several claimants; such judge may stay any proceedings pending in any court in relation to the same matter, and he may proceed in such manner and subject to such regulations as to making persons interested parties to the proceedings, and as to the exclusion of any claimants who do not come in within a certain time, and as to requiring security from the person or persons described in

paragraphs (a) or (b) of subsection (4) hereof, and as to payment of any costs, as the court thinks just.

The court has adopted rules of practice which govern the method of proceedings, and these rules are applied currently in the courts now on actions in limitations of liability under the other part of the statute. I have added the following provision:

> In making a distribution under this subsection of the amount determined to be the liability of the person or persons described in paragraphs (a) or (b) of subsection (4) hereof, the court may, having regard to any claim that may subsequently be established before a court outside of Canada in respect of that liability, postpone the distribution of such part of the amount as it deems appropriate.

This is taken from an amendment to section 658 which was enacted by 13-14 Elizabeth II, chapter 39, section 34, subsection (2). This particular provision is, I submit, of importance and may be of at least some use in the case of an accident, or a discharge of pollutant, occurring in the contiguous waters of the United States and Canada—on the Great Lakes, for instance. The shipowner will under the comparable American legislation have put up security for the amount of his limit of liability, which, by the way, is about equal with the Canadian one, and if there are claims on both sides of the border, then the court will be empowered to postpone the distribution of the Canadian Fund until it is known about the distribution of the American claims and how much was involved there.

I say that I have prepared these amendments with some diffidence because I do not consider myself an expert in legislative drafting, and I am sure you have among your committee persons who are perhaps better qualified than I am. I do not pretend, either, that the text could not be improved; but I submit it to you with respect for your consideration.

Another amendment which I propose is based on article 5, paragraph 5, of the Brussels Convention, to which I have referred in the previous hearing. I pointed out to you that the Minister of Transport, when the bill came for third reading in the House of Commons, indicated that it was the intention of the Government to be on all fours with the convention as far at it was possible.

There is in the convention a disposition to the effect that, if the shipowner incurs expenses after the discharge of a pollutant, in order to clean up the mess, if I may use this expression, or if he pays claims of persons who have suffered losses or damages as a result of the discharge, the shipowner will be subrogated in the rights of that person and can claim, in his stead and place, against his own fund and participate in the distribution of that fund pro rata with all the other claimants.

In other words, the owner will not recover in full what he has dispersed, but he will share in his own fund along with all the other claimants who have not been paid.

The reason for this is to give an incentive to a shipowner or his insurer, after a discharge of pollutant from a ship, to take immediate action in order to remedy the situation as far as possible.

If the shipowner was not given this incentive and if he realized that his limit of liability would be reached in any event, if not successful in cleaning up, then I would say that he would be rather inclined not to take any action himself.

My friend Mr. Macgillivray was telling me of an accident that occurred recently on the coast of Gaspé; there was a discharge of pollutant, the owner of that pollutant took immediate steps to clean up, and the clean-up was completed even before the report of the discharge reached Ottawa.

So I repeat that there should be for the owner an incentive to take action himself.

Again I have drafted an amendment to cover this point, which follows very closely the wording of the paragraph of the convention which I have mentioned earlier, namely, article 5, paragraph 5.

By the way, the convention is reproduced in the statement, or is appended to the statement which I delivered before the committee of the other place, and it was distributed at the last hearing.

The amendment would be paragraph (7) to be added to section 744, and it would read as follows, and I quote:

> (7) If before the Fund is distributed the person or persons described in paragraphs (a) or (b) of subsection (4) hereof or any of their servants or agents or any person or persons providing them insurance or other evidence of financial responsibility have as a result of a discharge of pollutant in waters to which this part applies paid compensation for actual loss or damage incurred by those referred to in paragraph (d) of subsection (1) of section 743, such person or persons shall, up to the amount they have paid, acquire by subrogation the rights which those so compensated would have enjoyed under section 743; claims in respect of costs and expenses reasonably incurred or sacrifices reasonably made by the person or persons referred to in paragraphs (a) or (b) of subsection (4) hereof voluntarily to prevent or minimize pollution damage shall, if they were incidental to the taking of any action authorized by the Governor in Council under section 743, rank equally with other claims against the Fund.

I have had occasion to discuss this particular issue with Mr. Macgillivray and he mentioned to me that this was in fact the intention of the bill and he referred me to section 743, subsection (1), paragraph (c). That reads as follows:

> Where the person or persons described in paragraphs (a) or (b) of subsection (4) hereof after the discharge of a pollutant in waters to which this part applies...

In other words, the owner would be responsible for the costs and expenses incurred by anybody, provided it is authorized by the Governor in Council. However, with all due respect I fail to see that this would cover expenses incurred by the owner himself. I realize it would cover expenses incurred by third parties, but I submit to you it is not really clear that it would even cover the owner so as to enable him to make a claim against himself or

against his own fund. This was realized at the time the Convention was drafted in 1969, and I might say that practically all of the maritime countries of the world were represented and the best legal brains were there and it was thought necessary to add a specific provision to that effect.

The next amendment which I would commend again as a subsection to section 744 is to be found on page 2 and it would be subsection (8). It is again patterned on the similar provision contained in the Convention where it is Article 6, paragraph (1). It reads as follows:

> (8) Where the person or persons described in paragraphs (a) or (b) of subsection (4) hereof...

That is the owner of the ship or the owner of the pollutant discharged from the ship...

> ...after the discharge of a pollutant in waters to which this part applies, have constituted a Fund in accordance with subsection (6) hereof and are entitled to limit their liability,
>
> (a) no one having a claim under paragraph (c) or (d) of subsection (1) of section 743 arising out of the discharge of a pollutant in waters to which this Part applies shall be entitled to exercise any right against any other asset of that person or persons in respect of such claim.

In other words, the owner has acknowledged his liability and he has paid into Court the fund making up his limit of liability and we say that in these circumstances it is reasonable and equitable that his other assets should not be subject to arrest. It is, if I may use the expression I used at the previous hearing, a tidying up of the legislation as it is now.

Paragraph (b) is of course a corollary and follows naturally from that. It says:

> (b) the Court shall order the release of any ship or other property belonging to that person or persons which has been arrested in respect of a claim for their costs and expenses and the actual loss or damage referred to in section 743 arising out of that incident and shall similarly release any bail or other security furnished to avoid such arrest.

After an accident a ship may very well be arrested to secure the claims of those who have claims, but once the owner has deposited his fund and been found entitled to limit liability, the Court should permit the release of the ship. Again this is purely a procedural matter which when the Convention was drafted was thought to be one that should be specifically provided for.

I now come to another amendment which is of extreme importance particularly for the associations which I represent here before you now namely the protection of indemnity associations which insure that liability of the ship owner for pollution damage. These associations, as I have stated earlier, are for all practical purposes the only insurers in the world that insure such liabilities. As you well know, Canada is entirely dependent on foreign shipping for the movement of its imports and exports, and the foreign ships coming here in most cases will have no assets in Canada, and in order to satisfy the requirement of this Act as to financial responsibility will provide a certificate of insurance which in turn will be a certificate of insurance issued by the PNI Associations. Now in fact it will be these insurers who will pay the claims; it will be these insurers who will put up the amount of the limitation fund of the owner, and therefore we consider it extremely important, or these insurers consider it extremely important, that they should be given the privilege of applying for limitation of liability and depositing themselves the amount of that limited liability. In doing so they will be relieved of any further liability whether or not the owner of the ship can limit his own liability. In other words, and I think this is contemplated under the Act, all that is required from the insurer or the guarantor is to provide a guarantee for the amount of the limited liability of the owner of the ship, and that is all that the guarantor or the insurer can be called upon to pay. Therefore, as was done at the Brussels Convention, we submit that the insurer should be given the privilege of doing directly all the owner can do himself, that is go to the Court and say "I am prepared to deposit the limited fund; here it is; will you distribute this fund amongst all claimants?"

As you know, under section 745 of the Act, the insurer can be sued directly by the claimant under the guarantee which he has given, and it seems logical that if he can be sued directly, he should also be allowed to raise the same defences that the owner would have raised if he had been sued himself, namely the defences which by the amendment brought in by the House of Commons was inserted in section 744, namely, an act of war, civil war, insurrection, act of God, that is a natural phenomenon of an exceptional inevitable and irresistible character, an act or omission done with intent to cause damage, by a person other than any person for whose wrongful act or omission the owner is by law responsible, the negligence or wrongful act or omission by any person or government in the installation or maintenance of lights or other navigational aids.

Briefly the guarantor should not be in a worse position than the person he guarantees, and that is the purpose of the amendment which I propose should be added to section 745 at the end of subsection (2). It is patterned on Article 7, paragraph 8 of the Convention and it would read:

> In such case the defendant...

That is the insurer or the guarantor.

> ...may, irrespective of the actual fault or privity of the owner of the ship or of the owner of the pollutant as described in paragraphs (a) or (b) of subsection 1 hereof avail himself of the limits of liability prescribed in subsection (4) of Section 744. He may further avail himself of the defences which the owner of the ship or the owner of the pollutant would have been entitled to invoke under subsection (1) of section 744. Furthermore, the defendant may avail himself of the defences that the pollution damage resulted from wilful misconduct of the owner of the ship himself or the owner of the pollutant, but the defendant shall not avail himself of any other defences which he might have been entitled to

invoke in proceedings brought by the owner of the ship or the owner of the pollutant against him.

I have explained in the committee of the other place that the only defence open to the insurer under this provision would be, for instance, the scuttling of his ship by the owner:

The defendant shall, in any event, have the right to require the owner of the ship or the owner of the pollutant or both as the case may be to be joined in the proceedings.

In other words, even though the insurer may limit his liability and simply pay the amount which he has put up as guarantee, this will not prevent the claimants from pursuing their remedies against the owner himself if the owner is not entitled to limit liability.

Senator Rattenbury: In a separate action?

Mr. Brisset: In a separate action—or simply recover from the fund created under this act, which we call the pollution fund or the voluntary fund, established by the oil companies under the organization known as Crystal, or under the international fund to be created under the convention to which I have referred earlier.

Senator Langlois: But if the owner of the ship or the owner of the pollutant are joined, it would be the same action?

Mr. Brisset: It would be the same action, but the guarantor or the insurer will be freed upon payment of the amount of his limited liability.

I should like to draw the attention of honourable senators to a problem which may arise here. There is similar legislation in the United States, and the owner of the ship has to put up security with the government or the federal Maritime Commission up to the amount of his limited liability. This is done in most cases, as it will be done in Canada, by means of a certificate of insurance provided by the P and I Association underwriters. Arrangements have been concluded between the London group of P and I Association on the text of this certificate, which is now accepted.

It is the practice in the United States, when an owner operates a large fleet, for the Maritime Commission to accept a certificate in the amount corresponding to the limited liability of the largest ship of the fleet. If the same practice were followed here and it were a smaller ship that was involved in the casualty it would be improper, I submit, to have the guarantor responsible for an amount in excess of the limited liability of the smaller ship simply because he has put up a guarantee based on the limited liability of the largest ship of the fleet.

However, these problems will most likely be dealt with when the regulations are passed and the practical aspects of the whole thing are reviewed and discussed.

The next amendment is subsection 3 to be added to section 745. It is based on article 5 of paragraph 11 of the convention:

The insurer or other person providing evidence of financial security shall be entitled to constitute a fund in accordance with subsection 6 of section 744 on the same conditions and having the same effect as if it were constituted by the person or persons referred to therein. Such a fund may be constituted even in the event of the actual fault or privity of that person or persons but its constitution shall in that case not prejudice the rights of any claimant against that person or persons.

I have already dealt with this. Although I have not submitted these proposed amendments to the department concerned—I must say they were prepared in a hurry—I have had occasion to discuss very informally what I was going to propose with Mr. Macgillivray. Mr. Macgillivray has had considerable experience in these matters. He has attended many international meetings, and I hope I will not offend him if I say that if I press him hard enough I think he will concede that some of these amendments should really be incorporated in the legislation to tidy it up.

Senator Burchill: Were they presented to the committee in the other place?

Mr. Brisset: The principles were submitted to the committee of the other place, but the amendments had not been drafted as I have done now. The principle was expounded. However, I realize that, from a maritime legal aspect, they are a little technical. Anyway, they were not acted upon. Only amendments of substance were made to the act by the committee of the other place.

Senator Hollett: Whta do you mean by "a maritime legal aspect"?

Mr. Brisset: What I have in mind is that action and limitation are peculiar to maritime law. You will not find any action of this kind in the civil law or the common law. It is entirely peculiar to maritime law.

The Acting Chairman: Before we proceed with questioning, it might be preferable to have comments from Mr. Macgillivray who is Director of the Marine Regulations Branch of the Department of Transport.

Mr. Brisset: There is one further remark that I should like to make. It involves a problem to which unfortunately I cannot offer any solution at this stage. I have dealt with this matter in the committee of the other place. I stated then that one of the matters which needs elaboration is the possibility of a discharge of pollutants in the international waters of the Great Lake on the east and west coast of Canada, when such discharge pollutes the waters of the shores of both Canada and the United States.

At the moment there is no reciprocal provision in the present legislation to take care of such a situation, and we submit there should be arrangements between the two governments to ensure that one single fund will be available to claimants on both sides of the border; otherwise two funds would have to be created of the same magnitude simply because the accident occurred in these waters rather than, say, in the lower St. Lawrence.

It should not be forgotten that insurance market capabilities are limited. They are limited to a sum of $14

million, and if the insurers were to put up a guarantee in the United States up to that limit and if they were to put up a similar guarantee in Canada you will readily see that they could be liable for twice the limit of their coverage. In fact, the United States has pre-empted the field. They now demand certificates of insurance from all ships going to US ports and the insurers do not feel that they could not accommodate ships of their members proceeding to Canada by providing this certificate if they have already provided one to the US Government. Otherwise they would be engaging their liability for twice the amount of their coverage. Therefore, it is of extreme importance that some arrangements be concluded between the two governments in order to ensure that Canada's needs can be accommodated by the insurers who insure this type of liability and who will provide the certificate of insurance required under the legislation.

I must say that underwriters are quite concerned in this regard. I again received a Telex the day before yesterday from the London group, pointing out this very difficulty and asking me to acquaint your committee with the problem. If action can be taken it should be taken in the very near future. This would prevent a situation such as would develop if foreign ships going to US ports through the international waters after calling here find themselves unable to obtain accommodation from their insurers to meet the requirements of this legislation.

I would be very pleased to answer questions, Mr. Chairman.

The Acting Chairman: Thank you, Mr. Brisset. I think Senator Langlois has a question.

Senator Langlois: Mr. Chairman, it is not a question to Mr. Brisset; I just wish to point out that since Mr. Brisset's amendments are based on the 1969 convention, when Mr. Macgillivray comments he should inform the committee of the participation taken by Canada in the international convention. Is Canada committed to it to some degree? What will be the official position of the Government with respect to these two very important amendments?

Senator Rattenbury: In view of Mr. Brisset's closing statement I would like a little amplification. Do P and I have a blacklist, or a list of ships they would insure? Would they possibly apply an increased premium?

Mr. Brisset: Yes, that will happen in some cases. Based on the experience of a shipowner, special terms will be imposed which may involve a higher premium.

Senator Rattenbury: But in view of your statement that you are the only insurers in the world covering this particular type of accident or tragedy, are there any shipowners that you refuse to insure?

Mr. Brisset: I am afraid I am not in a position to answer this question. I doubt that it would be so if the ship has passed the required inspections by the classifications society or the Government inspections such as steamship inspection in Canada. This is provided, of course, that the owner pays his premium; if he does not, he will not be insured. I do not need to mention this, of course.

Senator Flynn: Does Mr. Brisset suggest that the insurers may not be prepared to cover the liability as it is described in the act?

Mr. Brisset: They would not be prepared to provide the certificate of insurance to meet the requirements of this legislation if they have provided one to the US Government. In the case of a large ship with a limit of liability of $14 million, they will have provided a certificate of insurance to the US Government, under which they will be directly liable up to $14 million and that is the limit of their coverage.

Senator Flynn: They would not go further at this time?

Mr. Brisset: No; this problem is taken care of under the Brussels convention, which provides that the insurer will issue only one certificate, or one guarantee. This will be available in all the countries which have subscribed to the convention.

Senator Langlois: Mr. Chairman, this brings to mind another point which I would like Mr. Macgillivray to speak to when he comments on these amendments. Has Canada sought any reciprocity with the United States on the basis of the suggestion made by Mr. Brisset?

In other words, if we enact the provision that our courts should have regard to claims made outside Canada in limiting the liability of a shipowner or the owner of a pollutant, we should have legislation to cover the case of other countries concerned, such as the United States in the example given by Mr. Brisset of a pollutant being spread in the Great Lakes area.

I would like to know if the Canadian Government has already approached Washington on this matter?

The Acting Chairman: As Mr. Brisset has suggested a number of rather long and important amendments, we may at this stage hear from Mr. Macgillivray, who in his reply may also take into consideration the points raised by Senator Langlois.

Senator Flynn: It may be better to enquire if other witnesses wish to support the views expressed by Mr. Brisset before we proceed.

Senator Langlois: I know that Mr. Macgillivray is always ready to answer such questions and I think in all fairness we should give him a chance to take over.

The Acting Chairman: In that case we should hear from other witnesses and then proceed with the questioning.

Senator Kinley: Mr. Chairman, may I ask a question of Mr. Macgillivray? Is the International Convention for the Prevention of Pollution of the Sea by Oil, 1954, in force?

Mr. R. R. Macgillivray, Director, Marine Regulations Branch, Department of Transport: Yes sir.

Senator Kinley: That refers mostly to our inland fisheries, oil tankers not being included. Is it not true that they are exceptions to the convention?

Mr. Macgillivray: No, sir.

Senator Kinley: Well, I have it here; Article IV provides:

> Article III shall not apply to:
>
> (a) the discharge of oil or of oily mixture from a ship for the purpose of securing the safety of a ship, preventing damage to a ship, preventing damage to a ship or cargo, or saving life at sea;
>
> (b) the escape of oil or of oily mixture resulting from damage to a ship or unavoidable leakage, if all reasonable precautions have been taken after the occurrence of the damage or discovery of the leakage for the purpose of preventing or minimizing the escape.

That is excepted.

Mr. Macgillivray: No; the convention has been amended twice since 1954. We are in the position now that with the latest amendment every discharge of oil of any sort from a ship will be prohibited, excepting the provision for saving life at sea.

Senator Kinley: Is that an amendment to the convention?

Mr. Macgillivray: Yes, sir; there have been two amendments.

Senator Kinley: Someone in the House of Commons said that it is limited to 12 miles; we have 100 miles under that convention.

Mr. Macgillivray: Yes, it applies to Canadian ships all over the world, but we can only enforce it within 12 miles. When an offence takes place outside the territorial sea it is up to the country of registry to handle the prosecution.

Senator Kinley: Now we have a very small merchant marine. I think this gentleman said that all the insurance was co-insured, that is, was carried in London or France. I think he said there is no company in the United States and no company here—and that is my experience—which will carry these loads, is that true?

Mr. Macgillivray: I agree with Mr. Brisset, that the insured liability of this type is unobtainable practically for many organizations excepting the Protection and Indemnity Association that he speaks of.

Senator Kinley: Are there companies such as Lloyds which have any special provision in the laws of Canada?

Mr. Macgillivray: I do not think so, senator.

Senator Kinley: Are you sure?

Mr. Macgillivray: Perhaps that would be a question you could address better to Mr. Brisset. He is more familiar with it.

Mr. Brisset: If I may answer that question, the P and I associations, the London groups and others, have re-insurance arrangements on a worldwide basis, including Lloyds, and insurers in all countries of the world—France, Gemany, the United States, Canada and so forth. In their re-insurance contract, they try to obtain the maximum on a worldwide basis, but there is a limit to what the re-insurers will take, and then the excess comes back to the P and I associations.

Senator Kinley: Have they a monopoly in Canada, with no competition?

Mr. Brisset: I do not know whether you should call it a monopoly. They are the only ones offering the kind of service that the shipowners require. There is no one else who offers the service which the P and I associations offer to shipowners. They have correspondents, experts, in all parts of the world, to represent them and to assist shipowners. This is the only organization that exists with similar services. Nobody has been able to offer the same type of services.

Senator Kinley: It seems to be that they do so well that they carry on with very little interference.

Mr. Brisset: It should not be forgotten that they operate on a mutual basis.

Senator Kinley: Yes.

Mr. Brisset: It is in fact all the shipowners of the world who come together in order to insure themselves on a mutual basis.

Senator Kinley: They seem to be very slow in their payments and the matter of interest becomes important. It seems to me that they should be more prompt in their payments.

Mr. Brisset: With all respect, I have to differ from you, having handled so many claims throughout the year. I can assure you there is no problem. The Bank of England seems to be most anxious to provide the money, even though it is dollars, when it comes to paying claims arising out of marine casualties. On the contrary, I have found it very prompt.

Senator Kinley: Has there been any change so far as the inland waters are concerned, from this convention—regardig motorboats, and that sort of thing, vessels of a certain tonnage, captaincy and pilots? Is that all the same?

Mr. Macgillivray: There is no real change, senator. At the present time and until we adopt the most recent amendments to the convention, there has been an allowance for some minimal discharges from ships.

Senator Kinley: Yes.

Mr. Macgillivray: But under the new regime no discharges will be permitted.

Senator Langlois: Mr. Chairman, mine was not a question. I just wanted to remind Mr. Brisset that in order to give a complete reply about the monopoly of the P and I insurance coverage, he should insist on the mutual character of this insurance as protection indemnity insurance; and he has done so. Therefore, I have no questions to put to him.

The Acting Chairman: Thank you, Mr. Brisset.

Honourable senators, we should hear now from Mr. Lewtas, who is legal counsel representing Petroleum Association for Conservation of Environment—Imperial Oil.

Mr. Lewtas has suggested distribution of copies of the brief of the Petroleum Association for Conservation of Environment. I do not believe we have enough copies for all members.

Mr. J. L. Lewtas, Q.C., Counsel, Petroleum Association for Conservation of Environment—Imperial Oil: Mr. Chairman and honourable senators, I should clarify at the outset that I am officially appearing here for Imperial Oil Limited only. I did appear before the committee of the other place for the Petroleum Association for the Conservation of Environment, which goes by the short title of PACE, which is an association that members of the major Canadian petroleum companies formed for the purpose of dealing with environmental problems common to the industry. The reason why I officially appear for Imperial Oil Limited is that PACE, like all associations of that nature, I suppose, was just not flexible enough to keep up with the very rapid timetable of this bill...

Senator Flynn: To keep pace.

Mr. Lewtas: That is right. They have been unable to convene the necessary meetings and so on to form a united presentation.

The blue cover which has been distributed to honourable senators is a copy of the brief which was presented to the other place, in which we presented our views on the bill. Members of the committee will be gratified to learn that I have no intention of going through that again. It is put before you merely for the convenience and information, at the request of the president of PAGE.

In fact, instead of going into a comprehensive review of the bill itself and our attitude toward it, I intend to deal only with two provisions, where it seems to us the bill urgently requires amendment in order to give effect to its proper intent.

In order to make understandable, however, what I have to say today, it will be necessary, in the first place, to go somewhat into the background of the bill and of the attitude which Imperial Oil Limited and other oil companies have formed toward it.

I should say that the members of PACE did not manifest an attitude of implacable opposition to the bill, when they appeared before the other committee. Each of these companies have long been aware of the importance of pollution control as an element for the cost of their doing business. They recognize that the problem which this bill is seeking to solve is a problem with pollution, and they recognize that they should bear their fair share of the responsibility, in bearing the cost of it.

Another preliminary remark I should make is that although oil companies, by their very nature, tend to be associated with the shipping industry in many characteristics and aspects, they appear before this committee in one capacity only—as owners of cargo carried in ships owned and operated by other persons.

That does not make any less important what the oil companies have had to say on this bill, because it is precisely in those provisions of the bill which affect cargo owners that this bill is the most radical and trailblazing of its type. For this is the first bill that has made a cargo owner liable for damages to third parties.

Mr. Chairman, I should like to emphasize just how radical a concept this is. Historically, as you all know, if you wanted goods moved from point A to point B you gave them to a railroad or a trucker or an airline or a ship and you paid the freight and from then on it was the carrier's responsibility. If there were any damages caused to any parties in the course of the transit, that was his business, and, of course, that makes sense because he is in that business; he has complete control over the voyage or the trip. At the moment that you delivered your goods to him you surrendered control over the goods and over the trip.

Then, of course, what he does is to insure his risk and he includes the cost of insurance in the freight or hire which he charges you. All these many years that has been the system and it has worked well.

This bill would now change all that in the case of pollution damage caused by ships in Canadian waters. For the first time not only the shipowner but also the cargo owner is responsible.

Mr. Chairman, we do not even object to the principle of responsibility on the part of cargo owners. Again, this is a pollution problem and we recognize a degree of responsibility. However, in determining how the responsibility of the oil companies should be enforced, it is necessary for us to look critically at the applicable provisions of this bill. I am going to confine myself largely to sections 744 and 745, and I think it would be useful and even necessary in order to understand our problem if I were to summarize what the bill says about the liability of cargo owners.

In favour of persons who have been damaged by this type of pollution, then, the bill creates two levels of liability. On the first level it says that the shipowner and the cargo owner will be absolutely liable for the damages and that they will be liable jointly and severally. Still on that first level of liability, however, the bill imposes a ceiling on liability and in doing so invokes the traditional rule of maritime or marine law that a shipowner can limit his liability under certain circumstances. So the practical effect is that at that first level of liability, where the cargo owner and the shipowner are jointly and severally and absolutely liable, the maximum liability is $134 per ton of the ship's tonnage or a maximum of $14 million. Again at that first level of liability, in order to ensure that any amount payable will in fact be paid, the bill very properly requires the owner of a ship coming into Canadian waters, and the owner of any polluting cargo on a ship coming into Canadian waters, to post adequate proof of financial responsibility with the appropriate authorities.

That then is the first level of responsibility.

The bill goes further in that it imposes a second level of liability, the so-called maritime pollution claims fund which is maintained by contributions by the owners of cargoes coming into Canadian ports. That fund is available to make up all damages which are suffered and which, for one reason or another, cannot be paid at the first level of liability.

So that is the scheme of the bill. Mr. Chairman, it is a comprehensive scheme and should offer all the protection that people require in this regard.

Before the committee in the other place our objection to the bill was that our contribution, the contribution of the cargo owners, could be enforced just as effectively and far more equitably if the first level of liability were abandoned and our entire responsibility was taken, and our entire contribution to these damages was made, at the second level or out of the maritime pollution claims fund.

We gave a number of reasons before the committee of the other house for this position, but two of them are, I think, by far the most important and are sufficient to illustrate our position. The first of these was that the first level of liability, where we are jointly and severally liable with the shipowner on an absolute basis, is simply unnecessary for the protection of the public. Under the act the ship must insure against this loss. It must provide proof of that insurance before it is allowed to come into Canadian waters, and, therefore, up to the limits of the liability the insurer of the shipowner is going to pay all damages. If there is further damage beyond that first level, recourse can be had to the maritime pollution claims fund.

Our point here is to add the owner of the cargo as a person liable adds not one cent to the protection offered the public. So that is why we say that adding the cargo owner at that level is simply unnecessary.

Secondly, we believe that it is wrong in principle. The reason for that is that if cargo owners for the first time in history and without their fault are to become liable for these damages, then common sense indicates that they should be liable on the basis of a measurable cost of doing business. That is, the contributions of each of them should be made on a sensible apportioned basis such as their contributions proposed to be made under the Fund. To the extent that they are bringing cargo of this type into Canada, they should be assessed for them and make appropriate contributions to the Fund. Then their contribution, which is going to be reflected some day in the cost of petroleum products to the consumers in Canada, will be on a business-like basis, whereas, if we keep them liable on the first level of liability, their damages will not depend on the volume of their Canadian business. Their damages will depend on the accident or coincidence that on a particular day, when the waves were "that high" and the fog was "that bad", their particular cargo happened to be carried on a particular ship. We say that that is wrong in principle and is unbusinesslike.

Mr. Chairman, those were our two principal objections before the committee of the other place, and they will be reflected in our brief in the blue cover, if anybody is curious.

Those objections were to the effect that although we recognized our responsibility, it was far better that our responsibility be implement through the Fund and through the Fund alone. The other place did not accept that argument. When we asked why they did not, only one rejoinder was made to us, and that was to the effect that apparently there was some thought that, if the cargo owner was made jointly and severally liable at that first level of liability, he would in some indefinable way be more careful in selecting the ships which he chartered, and thus the public interest, this argument goes, would be served to the extent that a higher calibre of vessels would be plying our waters.

I shall not go into detail on our comments on that. Suffice it to say that that ignores the practicalities of the world chartering market. It just simply does not work that way. However, as I said at the outset, we are not here to re-argue our entire case made before the other committee. We have two points in respect of which, in order properly and fairly to implement the bill as it has been adopted, this present bill should be further changed.

The material in front of you includes a brief memorandum which we have prepared. It certainly does not purport to be a brief or a submission; it is merely and aide memoire, and to it I have appended the two proposed amendments which I shall be putting before you, and it is with at least as much diffidence as Mr. Brisset that I give you the text of these amendments. I do not put them forward with the suggestion that they should be incorporated verbatim in the statute, but merely to show how we are thinking and what the thrust of our amendments would be.

Mr. Chairman, I would request and in order to save the time of the committee by reading these into the record that you would arrange to have them printed as part of the record of these proceedings?

The Acting Chairman: Is it agreed, honourable senators?

Hon. Senators: Agreed.

Mr. Lewtas: The first of the specific recommendations, then, Mr. Chairman is that a cargo owner who is required to pay damages for this type of pollution should have a right to reimbursement from the owner of the ship which carried that cargo. Now I have had discussions on this point with Mr. Macgillivray, and he, of course, is here to speak for himself, but he left me with the definite impression that he believed that the true intent of the bill as it left the other place was in fact to preserve that write-over of the cargo owner against the ship owner. The unfortunate part about it is that the words of the statute which purport to do that are, I believe, clearly inadequate. Those words appear at the bottom of page 13 of the bill and they are the last five lines of subsection (1) of section 744. They say:

> and nothing in this Part shall be construed as limiting or restricting any right of recourse that a person liable pursuant to section 743 may have against any other person.

The problem there is that a cargo owner does not have a right against a ship owner for recovery of this type of liability, and therefore if the cargo owner is to have it, he should be given it specifically. The first amendment which I have included as Schedule A in the aide memoire which I have left before you purports to give effect to that right of recovery over.

Senator Burchill: Pardon me, would not his contract or his charter party cover that point?

Mr. Lewtas: Actually charter parties cover that exactly the other way round. I should like to deal with that later, if I may, because I think it comes better into context later.

Dealing with the proposed right of recovery then, Mr. Chairman, I should like to make the following remarks; first, as I have said, the cargo owner has been left at this first level of liability in order to protect the public only, that is by making the cargo owner more careful in selecting his ship. And perhaps, if you will, to make it easier for the public to enforce any damages which they might suffer. However, once the cargo owner has made the payment to a member of the public who has been damaged, the intention of this bill is satisfied. Then we are back to the relationships as between the owner of the cargo and the owner of the ship, and as I said at the outset, the traditional and historical relatonship between the two is the sensible one that once the cargo owner delivers the cargo to the carrier of it, that should be the end of his responsibility for that trip over which he has no further control.

The right of recovery which we are talking about should, on this reasoning, be a right of recovery which is entirely independent of whether the ship owner was at fault in causing the accident or whether he is liable only because of the absolute liability imposed by the bill. The reason for this is that having satisfied the intent of the bill by protecting the public, then once more there is no reason at all why a passive cargo owner should have any responsibility for a voyage. And this does not effect, Mr. Chairman, the economics of the carriage. Once again the ship owner is insured against this very thing. The proof of that is that the statute requires him to put up a certificate of insurance and the cost of that insurance is included in the hire which he charges us. In fact if it were the other way around, and if our right of recovery were dependent on our proving that he was negligent, then it would be necessary for the cargo owners to put their own insurance on this risk, and we really cannot see that that helps anybody, because it is the same risk and all we would be doing would be to insure it twice and at the expense of the users of petroleum products in Canada we would be enriching the insurance industry. That is the reason why we seriously ask that this right of recovery be not only spelled out but that it should be one that is automatically over against the ship owner.

To return to the point you mentioned, Mr. Senator, there must be a provision in any such write-over which overrides existing charters. The oil companies in a great many instances are operating ships under long-term charters. Those charters were all entered into without regard for the likelihood that legislation of this radical nature would be enacted. They therefore contain broad exculpatory provisions whereby the owner of a cargo in effect abandons practically every cause of action that he would have against the owner of the ship and it would be impossible, of course, to renegotiate these charters and some might go on for 10 or 15 years. Therefore we are asking that this specific provision which gives us a right of recovery against the ship owner in effect override the provisions in existing charters.

So, in conclusion on my first point, Mr. Chairman, we ask that specific right of recovery be given to cargo owners by a new subsection (6) of section 744 the suggested text of which we have given you. We ask that this right of recovery be independent of any fault on the part of the ship or the ship owner, and we ask that it be specifically expressed to override existing charters and other contracts between cargo owners and ship owners.

That leads me to the second of my two specific proposals in connection with the bill, and that relates to subsection (4) of section 744 where the limitation of liability concept is contained. Now, as you know, and as Mr. Brisset has already said this morning, this is a concept peculiar to admiralty law. This is not the same principle as a master being responsible for the acts of a servant; it is a unique principle where they say in effect that if there had been no actual fault or privity on the part of the owner of a ship to any accident, then his maximum liability for such accident will not go beyond certain stated limits. Now the words "actual fault or privity" have been spelled out in many admiralty cases and they can be summarized as indicating that the limits of liability can be invoked where there has been no personal blameworthiness on the part of the owner of the ship itself.

You can, for example, have negligence on the part of the master, but if there is nothing in the conduct or knowledge of the owner which would have led him to suspect such negligence would have happened, then he can invoke his limits of liability. The bill here extends this ancient principle to the new absolute liability which the bill imposes.

Our submission is that as presently drafted this bill has the simply outrageous effect that the liability of the cargo owner depends on the shipowner's ability to limit his liability. So it will depend on the personal conduct of certain individuals, whom he almost never knows and over whose conduct the cargo owner certainly never any control. For example, if oil spills out of a 50 000-ton tanker the normal limit of liability would be something like $6½ million. That tanker nowadays is going to be owned by a corporation, and if any directors of that corporation or any responsible officers or employees of it have some secret, guilty knowledge that, for example, the master was fond of getting drunk every now and again, or some piece of equipment had a latent defect that the person decided was too expensive to fix, and if, as a result, a disaster occurs, then the liability of the cargo owner becomes unlimited. This would be enough to court bankruptcy for some oil companies. This would result, even though the cargo owner had not known and had no

way of knowing who all these directors, officers or employees were, or what information they had, and notwithstanding this guilty information of theirs might have been obtained by them long after the charter had been entered into and, therefore, long after the cargo owner had any contractual right whatsoever to withdraw from his contract.

Senator Rattenbury: To expand that a little further, would you include the real owner of a ship, such as the insurance company or whoever it might be, as opposed to the operator of the ship?

Mr. Lewtas: Well, I prefer, senator, to deal with this on the basis that we are dealing with the primary parties: firstly, the owner of a ship; secondly, the owner of the cargo; and...

Senator Rattenbury: But in many cases there are three parties.

Mr. Lewtas: I was just going on to explain that, sir. We appreciate that the economics of it are such that insurers are very prominent participants indeed in a Maritime venture, but we think that if we sort out the primary liabilities of the parties, then the liability of the insurance company to indemnify those parties will follow. And if we sort out the original primary liabilities the proper way, then the insurance company is left with a proper indemnification obligation.

Senator McElman: You referred to a 50,000-ton bottom and $6½ million related damage.

Mr. Lewtas: That is right.

Senator McElman: Would that go up correspondingly? Would it follow that a 200,000-tonner, which is the thing of today, goes to $26 million?

Mr. Lewtas: It does not, because the overall aggregrate is placed at $14 million. But you are quite right, that up to the point where you reach that $14 million, it goes up, because it is a per ton figure.

To conclude, the present provision, as we see it, is just plain injustice. Again, it is completely unnecessary to implement the bill's purpose, for we have established that this amount will be paid up to the limitation of liability by the insurer of the ship, and any additional amounts that have to be paid will be payable out of the pollution claims fund, which is the source which the oil companies claim is the most equitable and most effective way to make their contribution to this very pressing problem.

So, in conclusion, I have placed before you a proposed amendment of subsection (4) of section 744 which would permit an innocent party, a party on whose part there has been no actual fault or privity, to limit his liability in the appropriate manner.

To summarize our submissions this morning, Mr. Chairman, we accept, as I have said, the principle of responsibility. We point out that in a private enterprise, co-operative economy, such as ours, any added costs inevitably become part of our price structure, and we have a product that is used very generally by the people of Canada. So we wish the bill to achieve its legitimate ends without imposing unnecessary, wastefully duplicated costs in carrying on our business. We think the Maritime Pollution Claims Fund is the best way of achieving this. If, however, we are to continue to be liable at the so-called first level of liability, then we respectfully submit that our two suggested changes are necessary to avoid useless additional costs and a large degree of unfairness in this bill.

The Acting Chairman: Thank you, Mr. Lewtas.

Senator Flynn: I have a question by way of clarification for the witness. With regard to this first-level liability that is imposed on the cargo, if it remained in the bill as it is presently, how would you meet it? I suppose by way of insurance.

Mr. Lewtas: To the extent we can get insurance, we would, senator.

Senator Flynn: Do you figure the cost of that insurance would be higher than the contribution you would make to the fund, if this liability on the first level was removed?

Mr. Lewtas: I think not, sir, because we would expect that this would be a duplication of our contributions to the fund.

Senator Flynn: Do you expect any substantial gain in the end by having this liability at the first level removed?

Mr. Lewtas: Yes, we do. Our position is that at the first level of liability it is inherent in the structure of this bill that all the amounts that are to be paid under it will be paid by the shipowners' insurers. It follows necessarily that that will happen.

Senator Flynn: With the limitation.

Mr. Lewtas: Yes, that is right, but at the first level of liability our own liability is expressed, I would hope in most cases, to be limited, and the fund, even under the bill as it presently is, is available for amounts that are payable in addition to the limit of liability under the first level.

Senator Bourget: Do you think that form would be sufficient, because I read somewhere in the bill it will be $3½ million in the first year. Do you think that would be sufficient to meet the extra costs of liability?

Mr. Lewtas: The trouble with that, senator, is I suppose you could make the technical argument that one disaster could be $200 million. We would hope that in due course the fund would be built up so that it would meet all disasters. I think the record is that there have been very few, if any, disasters where when you add that amount of money to the limited liability of the ships at the first level you would not be able to pay off all claims.

Senator Flynn: It seems to me, on the second point, that if the shipowner is responsible you have a claim for recovery against the shipowner. Whether you can achieve it is another thing, but in principle it seems to me that if

you have this recourse it does not have to be spelled out any more than it is in this act. When you are jointly and severally liable towards third parties, but as between the two, if one has committed a fault he is responsible to the others.

Mr. Lewtas: We are not at all sure of that. We are looking at it very carefully.

Senator Flynn: I have no doubt of that and I would be surprised if anybody would claim the contrary in law. It is the same as joint liability between the architect and the contractor. If one is called upon to pay for the fault of the other, one can recover from the other. It seems to me that this is clear. The point is that you would want to be able to recover from the ship owner even when no fault can be attributed to him. Can you imagine a case where there would be no fault at all, or no fault that could be identified under section 744, which would give recourse against another third party?

Mr. Lewtas: There are two parts to your question. The first is whether there is a write-over. We have looked at this very carefully and we have concluded that although the law is generally as you have stated it, what we are talking about here is an absolute liability imposed by Parliament upon two people. We know of no precedent for that type of situation and we are afraid that if a cargo owner were to try, in the absence of specific language, to make a claim against a ship owner, a successful defence would be that Parliament in its wisdom imposed absolute liability on both of them, that it does not depend upon the fault of either party, and therefore there is no write-over.

That doubt is enough for us to say at this time, when all ambiguity should be removed, that it would be wise to remove it.

Senator Flynn: Have we established the principle that this is a joint venture between a ship owner and cargo owner, because of the dangerous nature of the cargo, and that there is a joint liability towards the public? I cannot see your principle of recourse against a ship owner unless you are able to prove a fault or negligence on the part of the ship owner.

Mr. Lewtas: All that I am doing is being intensely practical in the matter. This act has disturbed the traditional relationships, as I described.

Senator Flynn: I know; but it exists in other fields, that everybody is liable, that between themselves they have recourse, that the negligence of one may be justified.

Mr. Lewtas: That is not quite my point. I am saying that maritime ventures have been going on for a long time and a certain attitude has grown up about them. What has happened is that risks to third parties have been assumed by the ship owner and the ship owner has traditionally had access to Mr. Brisset's client to make sure that he is properly insured against those risks.

I am saying that just hurly-burly to add the cargo owner to that and not give him an automatic write-over is not adding anything. It is merely adding an additional cost to the maritime venture.

Senator Flynn: We are speaking of dangerous cargo, which is something rather new historically. The disasters that we have known in recent years did not mean a thing 50 years ago.

Mr. Lewtas: We are not here to say that as owners of dangerous cargo we have no responsibility. We say that as owners of cargo we are prepared to stand up and be counted when people start to sue. To say that we cannot have a write-over is merely requiring additional insurance on a risk that is already insured.

Senator Flynn: I would agree that you should have a write-over when it is the fault of the ship owner, but when it is not the fault of a ship owner you can sue the person who may have been negligent.

Mr. Lewtas: But merely by making our right conditional upon his negligence we have added a further cost. There will be further cost placed upon the cargo owner and that cost will eventually be reflected in the cost of doing business.

Senator Langlois: Would you not have the same additional cost? Would not the insurance premium go up?

Mr. Lewtas: Nobody can penetrate the impenetrable mind of an insurer; but I would venture to say that an insurer who saw the potential of a disaster of this type happening and who was asked to insure the ship owner, would make sure that he got the premium necessary to cover every risk connected with that loss. The mere fact that there might be some potential contribution by the cargt owner would not reduce that premium.

Senator Langlois: But the measure of the risk is the same. Whether the losses are paid out by the ship owner or the cargo owner, the amount of risk is the same and the insurer will be called upon to cover the maximum risk. Whether it is paid by one or the other it does not matter.

Mr. Lewtas: The honourable senator is making my point. It is paid by one or the other and it does not matter. But why should we be added, if we do not have the automatic write-over? If we do not have the automatic write-over the insurance companies will say, "If you want us to cover that risk it will cost you more money," and, they have already covered the whole risk by their insurance on the ship.

Senator Langlois: You have not explained how the premium cost will go up if you do not have this write-over. At least, you have not satisfied me.

Mr. Lewtas: Then it is important that I do so. If the cargo owner were not responsible at all there would be a certain premium charged the ship owner. If we add a responsibility upon the cargo owner, and if there are only certain conditions under which he can recover from the ship owner, then when he seeks insurance there will be a measurable amount of cost in that insurance. That

does not mean, however, that there will be a corresponding reduction of the premium charged the ship owner.

Senator Rattenbury: That principle has been established for years in the construction industry where both the prime contractor and subcontractors are insured.

Mr. Lewtas: That is a duplication of insurance.

The Acting Chairman: Thank you, Mr. Lewtas. We will now proceed to hear from Mr. Galipeault, to be followed by Mr. Langelier. As I said earlier, Mr. Galipeault represents Texaco Caanada Limited.

Mr. A. Galipeault, Legal Adviser, Texaco Canada Limited: Mr. Chairman, honourable senators, my contribution this morning will be very brief, since the witness who preceded me himself indicated that his testimony covered the principles which the oil companies submitted to the House of Commons. In fact, you have before you the brief which the Petroleum Association presented on the conservation of the Canadian environment, and Texaco Canada Limited's views on the problem are contained in this brief. Such being the case, I shall not waste the Committee's time by giving a detailed review of the recommendations submitted to the House of Commons. Allow me to say however, that our company unreservedly supports the recommendations and suggestions contained in this brief.

We agree with the objectives of Bill C-2, and even with the principle of total compensation. Nevertheless we disagree with the methods suggested. Our company, like the company which appeared just before us, is opposed to the principle of joint and several liability on the part of the shipowner and the owner of the cargo. As you will see, this is one of the main objections raised in the brief which is before you. Such a concept constitutes a radical innovation in the area of civil liability and we submit, is basically false, in that the owner of the cargo, who has no control over the choice of crew or the way the ship is run, is nevertheless held jointly and severally liable with the shipowner who is the person actually exercising control. Such an approach is somewhat unjustified, as Mr. Lewtas pointed out, and not really necessary, since there are other clauses in the Bill ensuring that damages caused by a disaster will be duly made good.

We support the amendments presented by Mr. Lewtas on behalf of Imperial Oil Limited. I feel the mere fact that two lawyers discussing this clause have different opinions on its interpretation might be taken to indicate a need for some clarification of the clause in order to allow the owner of the cargo right of recovery from the shipowner.

Unfortunately, I have not had time to study Mr. Lewtas' amendment in detail, and I find it hard to express an opinion on this right if the shipowner was not at fault. Let me refer the committee to section 744 (1) (b), and particularly to the exceptions mentioned in (1) (b) (i). According to section 744, a person is not liable under section 743 if it is established that the discharge of the pollutant that gave rise to the liability was wholly caused by, and I quote sub-paragraph (i):

> an act of war, hostilities, civil war, insurrection or a natural phenomenon of an exceptional, inevitable and irresistible character...

Note that the French text stops after the word "inévitable", whereas the English text also mentions an "irresistible character", despite the fact that it is perhaps difficult to imagine a natural phenomenon which would possess all these qualities at the same time; this text comes from the convention on international civil law discussed in Brussels, but I think that an amendment should be made so that the French text will coincide with the English text.

Senator Flynn: Would you suggest that the expression be "un cas fortuit' (an act of God)?

Mr. Galipeault: Yes, "un cas fortuit". I believe that the French translation is "irrésistible".

Senator Flynn: I am not sure that that is the equivalent of "cas fortuit" in the English text.

Senator Langlois: If "irrésistible" is added after it.

Mr. Galipeault: If "irrésistible" is added, I think it will be perfect.

Furthermore, we submit that paragraph (b) of section 744 might be amended somewhat, because we think that these exceptions should apply not only where the liability is wholly caused by these acts, but also where the liability is only partly caused by them. At least the bill should not remain silent in the matter of partial liability. Again, if we refer to the text of the convention on civil law discussed in Brussels, this text is slightly different from the text given here. Sub-paragraphs (ii) and (iii) of the two texts are identical.

Now let me refer to the provision whereby, over and above their joint and several liability with respect to victims of damage caused by pollution, all companies are to contribute to an indemnity fund to be used for completing payment to these victims in the case of limited liability or lack of funds. Our company prefers this method, and, as pointed out earlier by Mr. Lewtas, we feel that it should be brought in at the first level of responsibility rather than be cumulative.

We believe, however, that international funds currently in existence, or soon to be put into operation, funds like TOVALOP, referred to previously by Mr. Brissett, could provide adequate protection at the present time while awaiting an international fund which is actually under discussion at the moment, and for which, notwithstanding the fact that these funds, TOVALOP and CRISTAL, are based on the principle of voluntary contribution, it may be argued that it would be impossible to force the fund before a court of law for any kind of payment.

Mr. Chairman, our company was happy to learn that the Ministery of Transport officials had indicated their intention to discuss the regulations which would be issued by virtue of the present Bill with industry, and we want to repeat here that companies could contribute if the Department so desired.

These are the only remarks which I wanted to make, Mr. Chairman. I don't think it is necessary for me to

discuss the memorandum before you as Mr. Lewtas has already covered most of the points.

The Acting Chairman: Thank you, Mr. Galipeault.

Unless honourable senators have questions or points they want to raise at this point, I think we may proceed to Mr. Jean Langelier, representing British Petroleum Oil.

Senator Flynn: Is this somewhat along the same lines?

The Chairman: Yes, this is why it would perhaps be preferable to follow with Mr. Langelier.

Mr. Jean Langelier, Q. C., British Petroleum Oil Limited: Mr. Chairman and honourable senators, while we were a party to the PACE brief which was heard before the House of Commons, I appear this morning on behalf of BP Oil Limited, a cargo owner, as I understand that PACE because of the pressure of time could not appear before you today. While I agree with the principle of some of the briefs you have heard today, those of Mr. Lewtas and Mr. Galipeault, and I hope that I will not be repetitious, I will raise other points which may be of interest to your committee.

The Acting Chairman: Before you proceed, Mr. Langelier, perhaps the brief you have submitted and distributed should be appended to the report of today's proceedings. Is it agreed, honourable senators?

Hon. Senators: Agreed.

Mr. Langelier: There will be some slight changes as I go along, Mr. Chairman.

The Acting Chairman: The changes will be noted.

Mr. Langelier: Honourable Senators, I would ask you to grant me your indulgence and understanding if I am unable to submit the French version of the remarks which I am about to make this morning. Due to the amount of time allowed, which was very small, and the fact that I did not receive the text until very late yesterday evening, I did not have an opportunity to translate it; however, if it is the wish of your committee that this text be translated, I shall take it upon myself to ensure that it is handed in to you.

Honourable senators, may I now draw your attention to the text of my remarks which you have before you and which I intend following fairly closely.

The cargo owners, under the provisions of sections 743 and 744 of Bill C-2 may be made liable for an amount up to $14 million for each separate incident in respect of various costs and expenses, including all actual loss or damage sustained by the Crown or by any other person resulting from the discharge of a pollutant in the absence of any actual fault or privity on the part of the ship and to an unlimited amount in the event of actual fault or privity.

Apart from what we consider to be the serious inequity of placing such an onerous liability upon the cargo owner—and I add in passing that in the Brussels Convention of which you heard this morning and in the US Water Quality Improvements Act, the burden of liability is placed on the ship owner solely—we understand that he will be faced with the virtual impossibility of obtaining insurance for such unlimited liability, especially as the ship owners themselves will be unable to obtain such insurance in the first place. We take this opportunity to refer in passing to the statement made by the representative of the London Group of Protection and Indemnity Associations before a Special Committee of the House of Commons on Environmental Pollution on November 24, 1970 which reads in part as follows:

> ...We repeat that the capacity of the world insurance market for oil pollution risks is limited in respect of each vessel any one accident or occurrence, to approximately $14,000,000.00 U.S.,... therefore Bill C-2 as it stands even in isolation could not be fully insured.

Honourable senators might recall the testimony of Mr. P. N. Miller of London, England called as a special witness before your Standing Committee on Transport and Communications on February 27, 1969 who stated unequivocally as follows:

> Mr. Shearer, sir, goes on to say in his statement that if unlimited liability were imposed on the shipowner by such legislation, it would be uninsurable. The position, as far as our group is concerned, would be that the shipowner would be uninsured as in respect of liabilities in excess of the amount to which the group and its re-insurers could provide insurance coverage. That figure may be between $10 to $15 million—somewhere in that region—but in excess of that figure a shipowner would not be insured; and your bill as it stands places upon the shipowner unlimited liability.

Mr. Miller further states:

> Now any legislation on oil pollution is going to impose yet a further burden and I as the broker for this very big group whom I represent here today have had very, very careful consultation with insurance markets all over the world to discover what additional amounts can be insured for this additional liability.
>
> From our experience we are certain when we say there are certain figures beyond which we cannot and which the insurance market as it stands cannot go. Those figures are somewhere in the region of a limit of liability overall for oil pollution by itself—an additional liability of between $10 million to $15 million or somewhere between $71 and $100 per gross ton.
>
> It is not that we do not want to insure it. It is simply that we cannot go beyond a certain figure.

Should you still deem fit, notwithstanding the representations made by the world insurance market, to hold cargo owners jointly and severally liable for occurrences such as are covered by Bill C-2, and this despite the various objections which have been made to this radical concept of placing liability on passive cargo, unequivocal provisions should be made affording the cargo owner the right to seek reimbursement from a shipowner when the latter is proven to be at fault, as the

present wording of the last paragraph of section 744(1) still leaves great room for doubt.

In their statements this morning Messrs. Brisset and Lewtas appeared to go a long way in clarifying the provisions of that section.

We welcome, under subparagraph (b) of section 744(1), the inclusion of exceptions to liability drawn along the lines of those contained in the 1969 International Convention on Civil Liability for Oil Pollution Damage, but we note that shipowners and cargo owners could only plead in defence such exceptions when the discharge of the pollutant which gave rise to the liability was wholly caused by the occurrences set forth in subparagraph (b)(i), (ii) and (iii)—which refers to the acts or omissions, the acts of God and casualties, and so on.

Senator Flynn: May I just interrupt you for a moment? With regard to subparagraph (b)(ii), have you given any thought to why it is mentioned that the act or omission would have to be done with intent to cause damage? I think that is a rather surprising word—with the "intent" to cause damage. This seems to me to be one rather weak point in the principle that is involved here.

Mr. Langelier: I quite agree with you, sir. My suggestion would be here for consideration by your committee that by giving this defence on a "wholly" basis I think is absolutely unfair, and it should read "on a partially or wholly—caused by". Otherwise if there is contributory negligence on the part of the shipowners—and even to the slightest degree, to 1 per cent, for example—it would not be caused "wholly" by the other party in the event that the Government had not, for instance, installed the proper navigational aids, if it were to proceed under this subparagraph of this section. So we feel that either the word "wholly" should be deleted, but preferably that it should be "partially or wholly caused by" and that would be in line with the normal principles of law in defence in such matters.

Section 745(1) requires that evidence of financial responsibility satisfactory to the Minister of Transport be furnished by the owner of the pollutant in addition to the owner of the ship that carries such pollutant in bulk to or from any place in Canada. We submit that the necessity for liability to be placed upon cargo owner or for the requirement for him to furnish evidence of financial responsibility to cover the same risk as that of the shipowner is not only inequitable and unjust but unnecessary duplication.

We recognize that Canada did not wish to wait for the conclusion of a satisfactory international convention on liability arising from damage caused by spills of petroleum products, because possibly of the delays which may be involved in its ratification by the maritime nations of the world. We would have thought that because of its multinational participation, such a convention would have retained the attention of our legislators as it would greatly reduce the payments required to be made by each company and would eliminate vexatious problems of jurisdiction and duplication. Be that as it may, the world petroleum industry showed a high degree of responsibility in also recognizing that pending the coming into force of the international convention dealing with tanker-owner liability for oil spills and a supplementary fund supported by cargo interests, it was not only important but urgent to establish the liabilities that might arise from pollution damage by the escape or discharge of oil from a ship.

The creation of an oil industry voluntary fund known as CRISTAL—Contract Regarding Interim Supplement to Tanker Liability for Oil Pollution—has now been announced, whereby the new cargo owners' agreement extends the total dollar amount of coverage for each separate oil spill to $30 million, which can be paid to private individuals and corporations, both public and private, as well as to governments. This agreement, which has been signed by the leading oil companies of the world, will be effective in a few days, on April 1, 1971. It supplements the already existing and operating voluntary fund called TOVALOP—Tanker Owners Voluntary Agreement Concerning Liability for Pollution. These two funds count as their members the major tanker-owners and oil companies of the world.

We urge that these funds be studied closely, particularly with regard to the advantages that they offer in relation to the availability of compensation for claims for pollution damage up to an aggregate limit of $30 million, so that no necessity arises for either an initial build-up of cash or a further accumulation after a claim has been settled, and the substantially lower costs that would be placed upon the Canadian economy.

We suggest that the oil industry has met the challenge to which it has been exposed, and should not be penalized, as it is, under the provisions of section 757(1). Payments to the Maritime Pollution Claims Fund should accordingly be made only—and I say "only"—by those others who ship pollutants into or in Canada in bulk as a cargo of a ship and who are not members of the voluntary CRISTAL fund.

If, however, Bill C-2 should be enacted in its present form—and this is tremendously important—CRISTAL will not respond to claims for pollution damage from persons in Canada. This situation stems from the fact that, under clause IV(B) of the CRISTAL agreement, the compensation available is reduced, *inter alia,* by the amount to which persons sustaining pollution damage are entitled under applicable law, and the fact that Bill C-2 essentially provides for entitlement to unlimited compensation from the shipowner and/or the cargo owner and the Maritime Pollution Claims Fund. Equally, the CRISTAL fund will not be available to reimburse Canadian cargo owners who may incur liabilities under Bill C-2, since the fund is designed to respond only to claims from persons who sustain pollution damage.

Thus, the passage of Bill C-2 in its present form will have the effect of denying to persons in Canada the benefits of the CRISTAL fund and, in effect, means that the full costs of providing compensation for incidents in Canadian jurisdiction will have to be borne by Canadians, rather than being spread across the entire world.

We further suggest that provision might be made for sections 746 to 760 of Bill C-2, dealing with the Maritime Pollution Claims Fund, to be proclaimed law at a differ-

ent time from that of the other provisions of the bill. In doing so, the implementation of those sections might be delayed in order to give the Government of Canada an opportunity to see CRISTAL in operation, and then determine whether it might be acceptable for Canadian requirements as an interim measure pending ratification of an international convention.

Gentlemen, that is the extent of my remarks on this matter.

The Acting Chairman: Thank you, Mr. Langelier.

Senator Rattenbury: Do I gather from the witness that in effect he is advocating his withdrawal from the legislation of C-2?

Mr. Langelier: No. What I am advocating is the fact that the cargo owner could be responsible up to the maximum of $14 million, but he should not have to contribute to the levy for the Maritime Pollution Fund.

Senator Rattenbury: But you laid great stress on the establishment of critsal, that it would not be available to Canadians, in effect, if this bill becomes law.

Mr. Langelier: That is quite so. The Cristal agreement provides that the amount to be paid by the institute administering the fund will be $30 million. The agreement provides that compensation will be made to all persons sustaining pollution damage as a result of said incident, regardless of the number of ships from which oil has escaped or been discharged, which in no event exceeds $30 million U.S. less some of the following.

We have been in consultation with the drafters of CRISTAL and the opinion given is that in view of Canadian unlimited liability under the provisions of Bill C-2 CRISTAL would not respond to a claim by Canada. In other words, Canada would be excluded from the provisions of the CRISTAL fund.

Senator McElman: The effect of your propositon would be to retain the maximum of $30 million by CRISTAL without interference by this bill, so that the overall maximum for any spill would be $30 million?

Mr. Langelier: That is not quite what I am saying. We retain the $14 million liability, but we should do away with the unlimited liability provisions of the bill as it stands.

Senator McElman: The effect would be $30 million maximum; is that correct?

Mr. Langelier: That is correct—possibly not by an international fund, but by leading tanker and oil companies of the world, but without increasing the cost of products to Canadian consumers if the bill is passed in its present form.

Senator Rattenbury: And other companies who are not members of CRISTAL would be covered under this legislation?

Mr. Langelier: Pollutants have been described in very general terms, but in terms of the bill the guilty party has been the oil company. They say the levy should be a maximum of 15 cents per barrel for every barrel of oil transported in Canada, and that it should apply to other ships that transport gases and other material of a pollutant nature.

Senator McElman: I believe Mr. Lewtas commented that one spill could run as high as $200 million in damages. I do not know whether he had in mind the Bay of Fundy but that is the area I am thinking of. We now have tankers of the order of 200 million tons coming in regularly, and in the event of a total disaster to one of those vessels, quite aside from the pollution to our shores, there could be almost a total wipe-out of one of the finest fisheries in the world, which could well run to a loss of $200 million. That makes the ceiling of $30 million that you are talking about very small. Where would the additional moneys come from to compensate fishermen in the industry for the total damage?

Mr. Langelier: The question is a good one but not an easy one to answer. As presently constituted the international convention would pay only the $30 million and that would be it. The question is will the Maritime Claims Fund, at 15 cents maximum per barrel, give satisfaction for the amount of damage being sought?

Senator Langlois: It will take at least 10 years to reach your maximum of $30 million at the rate of $3 million a year.

Mr. Langelier: Yes.

The Acting Chairman: Thank you, Mr. Langelier. Honourable senators, it is now 10 minutes past 12 noon. Perhaps we can sit until 12.30 and then adjourn, and resume the proceedings following the recess of the Senate this afternoon. I am advised that the session may not be a long one and that the Senate may rise at 3.30. We could then meet again and proceed with the remaining witnesses.

I apologize the Captain Hurcomb and Mr. Burke, but we have another representative of an oil company in the person of Mr. J. C. Phillips, General Counsel for Gulf Oil Canada Limited, and it might be preferable to hear from Mr. Phillips now.

Mr. Phillips has distributed a copy of his statement and, if it is the desire of honourable senators, it could be made an appendix to the record of our proceedings. Mr. Phillips, you may proceed. See Exhibit D

Mr. J. C. Phillips, Counsel, Gulf Oil Canada Limited, Toronto: Mr. Acting Chairman, honourable senators, the paper that I distributed is really not a submission in the true sense. It is merely a memorandum of notes containing points to which I would like to refer this morning.

Firstly, to put the position of the company I represent into some perspective, I should like to draw the attention of the committee to the fact that Gulf Oil Company is an integrated oil company and, among other things, is in the business of refining, producing and transporting crude oil and refined petroleum products by water as well as by other means.

As an example of the kind of maritime movement that we are engaged in, in the year 1970 the volume of crude

oil and refined products moved by the company by ocean-going vessels from points outside Canada into Canada totalled some 23½ million barrels. In the same period, coastwise movements of these products within Canada totalled some 12,900,000 barrels.

Senator Langlois: In Canadian barrels?

Mr. Phillips: Yes, in Canadian barrels. Gulf Canada owns no ocean-going vessels and its ownership of domestic vessels is limited to one ship of 15,500 dead weight tons. As far as movement of cargoes within Canadian waters is concerned, Gulf Canada is the owner of those cargoes. With very few exceptions Gulf Canada's offshore and crude and refined products purchase contracts are FOB port of loading. This means that title to and risk in the cargo passes to Gulf Canada at the point or port of loading. Now with this sort of background, I think it pretty obvious that the company I represent is interested in Bill C-2 primarily as a cargo owner. For this reason the points I have to make are confined largely to sections 743 through 745 and to some extent with the sections dealing with the proposed maritime pollution claims fund.

Now basically, as Mr. Lewtas earlier pointed out, the bill proposes the two concepts of legal liability which are entirely new to marine law, maritime law or admiralty law. They are new concepts in law in Canada period. First of all you have what has been termed the "primary liability" under which in the proposed bill a cargo owner has the same liability as the ship owner to victims of pollution on a joint and several basis, and this is a liability irrespective of fault. Then over and above that, there is a secondary liability and that is the one which requires cargo owners to contribute to the establishment and maintenance of a maritime pollution fund. Now this fund would be used to provide compensation to a pollution victim over and above that which is recoverable from the ship owner or the cargo owner under the primary liability feature of the bill. I think it is pretty obvious and we would all agree that the purpose of the legislation and the concept which gave rise to it is that all persons who suffer damage as a result of pollution by oil or maritime pollution by oil should receive full compensation. Now I want to make it clear that so far as the company I represent is concerned, I do not disagree with the concept. I wish to make it equally clear that we do not believe that the method of achieving that objective as set out in the bill is fair or equitable or necessary.

First of all let me deal with the question of primary liability. Gulf Canada is opposed to the introduction of joint and several responsibility of cargo owner and ship owner as proposed. Mr. Lewtas touched briefly this morning earlier on the reasons which he had on behalf of his client for his opposition and for his disagreement with this approach. His reasons are largely the same as my own. If you look at this from a practical point of view, you have the situation where historically and under present international convention and under present international usage a ship owner is liable for damage which is caused up to certain statutory limits. In short he has the right to limit his liability. So far as damage caused by pollution under the present bill is concerned, the ship owner is definitely liable up to the statutory limits provided in the bill for damage, loss and expense caused by pollution. In certain cases he has not the ability to so limit it and therefore is objected to unlimited liability. It is now proposed that the cargo owner shall assume jointly and severally with the ship owner that same liability. It has already been brought out this morning that the liability of a ship owner up to a certain statutory limit is insured and it is also brought out that the bill specifically provides for the filing of evidence of that insurance and in a form which permits the claimant to reach directly the guarantor or insurer. The question that I have to ask is this; what useful purpose is served by joining the cargo owner in these circumstances particularly when creating a completely new concept in the law of liability? Now if there was a necessity for it or a good reason for it, that would be a different matter. But as we see it, there is no reason or necessity for it, because behind this primary liability under the proposals contained in the bill will be constituted a fund which will be available to provide compensation to pollution claimants over and above that which they will be able to recover from the ship owner. We therefore feel that as long as the concept of a fund in its present form is retained, there is absolutely no reason, no necessity nor really is there any justice or equity in providing in this primary level a joint and several liability of the cargo owner with the ship owner. Certainly if despite the rather ingrained attitude that seems to prevail on this point up to this period of time this concept of joint and several liability is maintained, I would fully support and endorse on behalf of Gulf Canada the amendments proposed by Mr. Lewtas this morning dealing particularly with the specific right of recourse which should be given to the cargo owner to recover over and against the ship owner in respect of any payments which the cargo owner may be called upon to make under the provisions of the bill.

Secondly, I endorse Mr. Lewtas' proposed amendment dealing with the fault or privity position, and I would for the sake of brevity adopt the arguments he has put forward in support of that proposition.

Now, if I may spend a moment on the question of the maritime pollution fund which is the so-called secondary level of liability imposed on the cargo owner, again I say that in considering the fund, it must be considered in context with this primary liability question that I have been belabouring for the last few minutes. First of all it is clear from the provisions of the Act that the fund may be drawn upon to compensate for damages caused by any pollutant, whether it be oil or anything else. The fund contributors as the bill stands will be limited to the owners of oil cargoes. In our view this does discriminate against members of the oil industry to provide a fund which at this point in time and with the bill in this form and in the absence of any regulations to the contrary requires the oil industry to subsidize pollution damage from all forms of pollutants. In our view the bill should be amended to provide that the fund be not available for disasters caused by pollutants other than oil until such time as the owners of cargoes which are deemed to be pollutants other than oil are required to contribute to the fund.

We also believe that the exceptions which are contained in section 744, with respect to the liability of shipowners, should apply to the absolute liability of shipowners and should apply to liability on the part of the fund itself.

An item which we believe to be important in connection with the fund is that there is no clear definition of what constitutes an inland voyage. I think this is particularly important from the point of view of the members of the oil industry. I say that, for this reason, that, for example, a cargo of bunker may be brought from a point outside Canada, shall we say, to Point Tupper in Nova Scotia. It will be trans-shipped and put in tankage at Point Tupper, Nova Scotia. It then can move from Point Tupper to Montreal via another ship. It can be stored in Montreal. It is then possible for that bunker to be further shipped from Montreal to Clarkson, Ontario, put in tankage at Clarkson, Ontario, and can then go from the tankage in Clarkson, Ontario to a harbour ship to bunker other vessels.

On the basis of the bill as it presently stands, there could be a maximum 15 cents per ton levy, which would be contributed to the fund, imposed on the move into Point Tupper, again when the same product moves from Point Tupper to Montreal, and again from Montreal to Clarkson, and possibly into the small harbour boat that is going to bunker other vessels.

The same thing applies to crude oil. Crude oil can be brought in by ship from a point outside Canada to, shall we say, a refinery in the Maritimes, and a levy will be placed on that crude oil which comes in, and it will go into the fund. That crude oil will be refined in a refinery in the Maritimes, and the products of that crude oil will again be trans-shipped from the point of process to a number of other points, perhaps two or three in number, subsequent to the refining process being completed. Again, the same product becomes subject to a number of levies under the bill as it presently stands. Terminally, and the trans-shipment to various terminals, intermediate stops, in the Great Lakes system, for example, can also pose a problem unless there is a specific and clear definition in the bill as to what an inland movement of this kind of product actually constitutes.

We believe too that the bill should specify a maximum amount. In short, as it is presently constituted, the act provides that contributions will be made to the fund on what would appear to be a possible perpetual basis without regard to experience and without any limitation on the total amount which can be accumulated in the fund.

Again, this is something which can be corrected by regulation and, undoubtedly, the regulations will deal with the practical administration of the fund in this respect. However, it is our experience that unless a maximum of some sort in these circumstances is specified in the bill itself, the regulations seldom are satisfactory when they are put together.

We therefore urge that a maximum—subject to whatever increases or decreases, based on experience, may from time to time be deemed necessary—be inserted in the bill at this time.

So far as the maximum is concerned, it has been expressed before the committee of the other house that a figure of $10 million would seem to be sufficient, based on present experience. I am advised that this figure of $10 million is not based on Canadian experience, but is one which has been developed on an international experience basis to this point in time.

Mr. Chairman, Gulf Canada does view with some regret the fact that the liability provisions contained in Bill C-2 have not been brought entirely into line with the Brussels Liability Convention. We feel that this is particularly regrettable due to the known progress which has been made in the establishment of the International Compensation Fund for oil pollution damage.

I think all members of the committee are aware of these matters, and I do not propose to elaborate on them. I would say that the fund which is contemplated is a cargo-supported permanent fund which would supplement shipowner liability for oil pollution up to a maximum of $30 million per incident.

It is and it has been noted already that compensation can only be made available out of the fund in countries which ratify the Convention. It is our understanding that if Bill C-2 is passed in its present form, should this permanent fund be established Canada would be debarred from participating in the fund unless and until either Bill C-2 at that time be withdrawn or suitably amended.

I think too it should also be noted—as my predecessors here this morning have pointed out—that there is in existence a voluntary agreement among the international oil companies known as the CRISTAL Agreement which I understand too will become effective on April 1, 1971, under which there will be available to provide compensation to pollution claimants an amount of up to $30 million per incident.

In view of these circumstances which have arisen and have taken shape prior to the introduction of Bill C-2 originally, we do believe that a further look should be taken, particularly at the liability provisions of the bill, dealing again with the primary liability question, to bring the proposed legislation into line with the draft of the Brussels Convention, so that there will be no conflict between the two if, as and when the international convention is finalized.

That really concludes the remarks I have to make. I have with me three gentlemen: Dr. John Lovering, who is the Chairman of the Gulf environmental affairs committee; Mr. Horace McTavish, who is Manager of Gulf's transportation department; and Mr. Fred Atkinson, who is Gulf's co-ordinator of environmental control. If necessary, these three gentlemen will help me in answering your questions.

The Acting Chairman: Do honourable senators wish to entertain questions, or should we adjourn and resume our sitting when the Senate adjourns?

Senator Flynn: Let us conclude when the Senate rises this afternoon.

The Acting Chairman: Then we will adjourn until the Senate rises this afternoon.

—Upon resuming at 4 p.m.

The Acting Chairman: Honourable senators, we now have with us Captain P. R. Hurcomb, General Manager, Dominion Marine Association, Ottawa.

Captain Philip R. Hurcomb, General Manager, Dominion Marine Association: Mr. Chairman and honourable senators, the Dominion Marine Association represents the Canadian registered inland shipping trading in the Great Lakes and the St. Lawrence river. There are 22 companies. We have 160 vessels and these vessels include 37 tankers. By the way, this is about the only Canadian registered fleet of significance in the orthodox sense. We have very extensive operations on the west coast but these I mention are the Canadian registered ships of substance.

I should emphasize here that I speak here for the shipowners, as distinct from the cargo owners. Some of our members—we have Imperial Oil, Shell Oil, Gulf Oil and Texaco—are of course cargo owners as well as shipowners. They have spoken as cargo owners and if I say anything here inconsistent with the views they have expressed, obviously they are out of the ambit of my remarks.

Mr. Chairman, after very extensive committee hearings in the House of Commons a number of changes were made to the bill. Most of these had been recommended by the various interests you have heard today.

These changes were all to the good, they improved the bill; but there are still one or two things that, from our standpoint, we think remain to be done.

Generally speaking, the bill imposes many onerous obligations and costly obligations upon shipowners in the Great Lakes which we cannot help feeling, perhaps, are not entirely justified by the situation we are in, that is to say, the safety record, and everything else. We will say nothing about those aspects of the bill. We will simply come to the two or three main features.

First of all, may I say that we agree entirely with the points of procedure, as he described it, that Mr. Brisset recommended to you this morning. We agree with the substance of the amendments that he presented to you.

I then will spare you a repetition and simply speak of three points that affect us particularly. The first is a matter of absolute liability. When this bill came to the House of Commons first it was a situation of absolute liability. There were no defences to the claim against the shipowner and the cargo owner.

The House of Commons committee recommended—and this is written into the bill—certain defences. They are the defences which appear in the international convention but they really did not affect the practical situation, as you will see when you look them over.

The exceptions are: First, an act of war, hostilities, civil war, insurrection, natural phenomena.

The second exception is, an act or omission done with intent—some form of sabotage.

The third was the wrongful act of Government or some similar agency, for failing to place navigational aids where they ought to be.

Those exceptions really do not cover the majority of situations. The common situation will be where the spill was caused by the negligence of a third party. Let us say, a tanker proceeding on its lawful way, with complete care, is run into by perhaps a dry bulk carrier, perhaps of our own association. It would not be a defence to the tanker owner or the cargo owner to establish that the real cause was the negligence of this third party. We think it should be, we think that should be a defence. This is the traditional approach to marine litigation and we see no reason to depart from that traditional approach here.

The answer will be, I suppose, by Mr. Macgillivray and his department that he has simply used the same exception as is set out in the Brussels Convention. That is not a justification, in my opinion. In the United States, under their act of 1970, they are far more specific in covering the same kind of situation. They set up the following defences: First, an act of God; second an act of war; third, negligence on the part of the United States government; and fourth, an act or omission of a third party without regard to whether any such act or omission was or was not negligent.

In other words, the association in the United States has a device we here do not have, and I commend it to your attention, Mr. Chairman. It is a matter that might very well be remedied. That is my first point.

My second point has to do with a matter raised initially by Mr. Lewtas, and, I believe, subscribed to by Mr. Galipeault and the other two representatives of the oil companies. They all felt that there ought to be in the act specific provision for a right of action over on the part of the cargo owner against the shipowner. You remember that the act makes those two people jointly and severally liable, but since the cargo owner, as Mr. Lewtas points out, has no control over the cargo once it is placed in a ship, it is therefore unfair to saddle the cargo owner with liability without giving him a statutory right of action over against the shipowner and he suggests that they should have that right of action whether or not the shipowner was negligent. That is where I have to disagree. I am sure that with respect to what I am now going to say the oil company members of DMA will want to disassociate themselves completely, but we would be quite content to have a right of action over against the shipowner where the latter is at fault; but we think it is going one step too far to give that right of action over whether or not the shipowner is at fault. That is the reservation we have about that suggestion.

As Mr. Lewtas and the others have said, the idea of making the cargo owner responsible is a radical departure from the normal procedure of matters. We, as shipowners, say nothing about the wisdom or otherwise of that approach. That is not our concern. We do not favour it; we do not disfavour it. But Mr. Lewtas talks of the cargo owner being innocent of necessity in respect of anything that might happen after the tanker is loaded. That is true, but we, too, as shipowners are under the existing act saddled with responsibility however innocent we may be. So I would say that the field is littered with the bodies of the suffering innocent of various types, and we too as shipowners, are saddled with this responsibility despite our innocence.

I hope I have made that clear, Mr. Chairman. We would not object to a right-over being spelled out in the event of negligence on our parts. We think this exists in the common law in any event. But we go no farther than that.

Finally, I come to the third and last point, Mr. Chairman, which is unquestionably most important from our standpoint. This was mentioned by Mr. Brisset, who gave it particular emphasis as I recall. I am referring to the international relationship, the U.S.-Canada relationship. When the lofty minds of the Department of Justice drafted this proposed legislation I believe they were thinking in terms of *Torrey Canyons* and *Arrows* and international shipping generally. I do not think they thought very much about the situation affecting Canada's only registered fleets, and that is the inland waters. Everywhere we go in the Great Lakes, and virtually everywhere we go in the St. Lawrence north of Beauharnois, we are in and out of the United States waters. The United States ships and other ships are in and out of Canadian waters. It is, in effect, a single body of water.

This was recognized in 1909 by the passage of the Boundary Waters Treaty Act. It is a single body of water. You must have compatibility of legislation in matters dealing with commerce in those waters. This is one of the things we do not have in this bill.

We have the Water Quality Improvement Act, 1970, in the United States and we have this bill here, and the two are divergent; each goes its own way. There is room for some compatibility and some negotiation between the two countries. The particular point I am thinking about is the matter of settlement of claims. Under the US legislation, the limitation of liability is $14 million, the same as is provided for in this bill, but it is $100 per gross registered ton up to a maximum of $14 million. That is US law. The Canadian limitation is roughly $137 or $140 per net registered ton with a maximum of $14 million. So those limitations work out pretty well even.

But if a disaster were to occur in the Great Lakes, it is going to effect both sides, both waters and probably both land areas particularly in the Detroit River, St. Clair River, St. Mary's and the Narrows Channel. It is bound to affect them. But the legal position as this bill now stands is this; we Canadian ship owners have to, and we are doing this now, establish financial responsibility in the United States even for our dry bulk carriers up to these limits that I have mentioned. It is quite an administrative procedure and we are having great difficulty with it. If an accident were to occur in United States waters, we would be liable up to these limitations, so you have a potential limit of not $14 million but more likely, because of the size of our ships, $2 million. If pollution ran over to the Canadian side or if there were some doubt as to where the accident occurred, we would have the same limitation under the Canadian Act, so you would have two sets of circumstances.

Senator Flynn: Does it depend where the accident occurs and not where damage has occured?

Captain Hurcomb: I think that is true, Senator Flynn. Nevertheless, we lawyers were arguing about this just a few moments ago, and the consensus seems to be that if an accident were to occur to a Canadian ship on the US side of the St. Clair River and polluted both countries, certainly the United States would have the basic action because the accident happened in their waters. Incidentally, May I interject here that there are some very good lawyers at this hearing so I hope if I say something outrageously wrong somebody will jump up and scream. So the Americans have first shot, but the pollution has come over into Canada and has damaged the fishing there and has damaged land owners in Canada. So where does the money come from to pay for that? There is an impression now that this money would come out of the pollution fund—that is the 15 cents per ton that our friends, the cargo owners have paid for—in that event. It is a curious result, but the point I am trying to get across is that you cannot take the boundary line in this area and just say "All right we will have one line and one administrative procedure in this area here and another over there." It is not that simple. What we want is a provision in this act which permits negotiations with the United States to work out comptatible regulations and a system whereby only the one limitation—not the two, but the one—would be paid into court and all the claims on both sides would be pro rated out of that single fund. This makes sense and it fits in with the kind of compatibility you have all throughout the Great Lakes.

You could carry that further on the west coast. We hear this talk of a pipeline from Prudhoe Bay in the Arctic to Valdez on the coast of Alaska, and then your huge tankers running down the coast. These tankers, when they get close to Seattle, or Cherry Point, where the big refinery is, would be coming very close to Canadian waters. We think they could avoid Canadian waters, but they are on the Straits of Juan de Fuca narrows and they can go this way or that way, and they are 200,000-ton tankers. How are you going to work out claims as between Canada and the United States without some kind of provision for agreement and compatible regulations?

So, to make a rather long story short, Mr. Chairman, there was an amendment suggested when the U.S. bill was first presented, designed to achieve just what I am talking about here. This was dropped because Canada and no other country had shown any interest at the time. And remember it is not in the U.S. act, but it is our suggestion of the kind of thing we would like to see in our act. By the way, this appears in Issue No. 6 of the minutes of the House of Commons Committee, dated November 24, at page 6.57. If I may, I will read it; it is quite short. Where appropriate I am going to say "Canada" instead of "the United States".

> In any action instituted by Canada under this subsection the aforesaid maximum amount of liability of

I will say:

> ...$140 per gross registered ton or $14,000,000... shall be reduced by such portion of the amount paid or payable to the Government of any other Country, in respect of liability for the cost of removal of oil or matter, arising out of the same incident, as such

other Government would have been entitled to receive if Canada and such other Government had agreed to share the amount of such maximum liability in proportion to their respective removal costs.

This is the point. Practically speaking, I suppose if a claim were initiated on the Canadian side, the amount under limitation of liability would be paid into the Federal Court, I suppose, and the federal court would hold this and would pay out of it not only Canadian claims but U.S. claims as well.

Senator Flynn: May I suggest a solution to this problem? The discharge of the pollutant is the fault itself, but the right of action arises when the damage is caused and it is where the damage is caused that the right of action arises. So I would suggest that damages done within Canadian territory, or within the limits prescribed by the act, would be under Canadian jurisdiction, and damages sustained in the U.S. would be under U.S. jurisdiction—wherever the accident occurs. Because if you discharge a pollutant 50 miles from the shore and it does not reach the shore, who is going to complain? And who can complain, and what law would apply? It seems to me that the rule would be determined by the place where the damage would occur. If I shoot someone across the border, then it is where the bullet is received that the jurisdiction would take place.

Senator Bourget: What about responsibility? If the accident happened in Canadian waters and then it is spread over into U.S. waters there would be, according to the act, double responsibility, not limited to $14 million but to $28 million, because you have two countries who would be after the ship owner or the cargo owner.

Senator Flynn: That is so, if the damage affected two countries, but if an act did not occur in Canadian waters but caused damage in so-called U.S. territory I think that only the U.S. court would have jurisdiction.

Senator Bourget: I am not a lawyer.

The Acting Chairman: That was the point raised by Captain Hurcomb.

Senator Bourget: I think it is a very important point.

Captain Hurcomb: Senator Bourget has raised another point. The bill is so complicated. Another provision for ensuring financial responsibility, which was discussed this morning, was section 745 appearing on page 15, that the owner of any ship carrying a pollutant to or from any place in Canada must establish in advance his financial responsability. So that if something happened he would not run away and be home free. But that provision is worded curiously. It says:

> This shall be done by the owner of any ship that carries a pollutant in bulk to or from any place in Canada.

Everything hinges on "to or from any place in Canada". Let us say that an American ship passes through Canadian waters in Lake Erie, as it must do at some point, but never goes to a Canadian port at any stage of the game. Let us say it is carrying oil from Detroit to Chicago.

Senator Bourget: Or from the west coast.

Captain Hurcomb: It gets into Canadian waters, but neither of the terminii of the voyages is in Canada. Our legal opinion is that an American ship does not have to establish financial responsibility because he is not carrying a pollutant to or from any place in Canada. That should be straightened out.

Senator Flynn: If it does not have to establish financial responsibility, would you suggest it has not the financial responsibility required by the act?

Captain Hurcomb: If you can catch him if, say, there is a collision.

Senator Flynn: If you are speaking of the problem of enforcement, then that is something else.

Captain Hurcomb: Let me give you the other side of the coin on that question. Assuming that a Canadian ship is carrying oil from Montreal to Toronto, or Port Credit, and no U.S. port is involved, but it goes into U.S. waters at some stage. Under United States law the Canadian ship is obliged to establish financial responsibility because the wording says not "to or from a place in the United States", but "using any port or place in the United States or navigable waters of the United States". I am reading from the United States act which honourable senators do not have before them. I am trying to show that Canadian ships must establish financial responsibility.

Senator Flynn: Are you suggesting that we improve our act in this respect?

Captain Hurcomb: I think it should be clarified. I feel proof of financial responsibility should be required of any ship that enters Canadian waters, as defined in this bill, with a pollutant.

Senator Rattenbury: That will require a great deal of bookkeeping.

Captain Hurcomb: This really is final, Mr. Chairman. The big difficulty in not having Canada-US agreement of some kind is that we might be conceivably faced with liability under both the US act and the Canadian act, with two sets of maximum limitations of liability filed one on top of the other, the US and the Canadian. The P and I people have said that they will not insure in a situation where, arising out of the same incident, there are two sets of liability established by two diffrent environments. Now, in my opinion this highlights or emphasizes the necessity for US-Canada compatibility and we think that the door should be opened to negotiations between the US and Canada. That is all we ask.

Senator Flynn: You do not need anything to do that; the two governments can negotiate. However, the way I read clause 737, the fact that discharging pollutant, wherever you discharge it, if it goes into Canadian waters or Canadian territory and causes damage, creates liability and gives the recourse against the shipowner or the cargo owner.

Captain Hurcomb: Even though the incident occurred outside Canada?

Senator Flynn: Yes.

Captain Hurcomb: With great respect, sir, I consider this is very questionable.

Senator Flynn: Well, if you discharge a pollutant and cause damage in Canadian waters, even if you do it 50 miles from the shore.

Captain Hurcomb: I am afraid this is not the view entertained by others.

Senator Flynn: I would like to have the opinion of the counsel of the department and if Mr. Brisset is willing to offer his I would be pleased to listen to it.

The Acting Chairman: Senator Flynn, I believe those are the kind of questions we should proceed with after we hear from Captain Hurcomb and Mr. Burke.

Senator Flynn: I do not intend to pursue that, Mr. Chairman.

Captain Hurcomb: Mr. Chairman, I will not labour this any further; I will be here if I can be of any help.

Senator Bourget: Do you have no amendments to leave with us?

Captain Hurcomb: I can only say that we subscribe to the amendments proposed by Mr. Brisset, at least in principle. We have only these further amendments, which I really have not put into words because the matter is mightily complicated, in connection with permitting an international agreement between the US and Canada.

The Acting Chairman: We will now hear from Mr. J. J. Burke, General Manager, Canadian Chamber of Shipping.

Mr. J. J. Burke, General Manager, Canadian Chamber of Shipping: Mr. Chairman, honourable senators: my name is James Burke. I am the General Manager of the Canadian Chamber of Shipping, which is an organization comprised of Canadian associations concerned with or having an interest in maritime affairs.

Very briefly, our raison d'être is to protect and promote the interests of the members of our constituent groups, which include the Shipping Federation of Canada, the British Columbia and Maritime Employers' Association; the B.C. Tugboat Owners' Association; Canadian Shipowners' Association and the Chamber of Shipping of British Columbia.

We are of course concerned with the problems which the preceding speaker has drawn to your attention and we support the views he has so ably expressed to you. We also support the views as just expressed to you by Captain Hurcomb on behalf of Dominion Marine Association. It is not my intention to comment on any particular section of the bill which you are considering now. Experts have testified already before the committee of the other place and indeed the views of the industry were expressed at some length and resulted in a number of desirable amendments.

We wish to express the views of some of our constituents in so far as international aspects of some of this proposed legislation is concerned.

With your permission, I would like to read from a prepared statement, of which I have provided copies. Is that in order?

The Acting Chairman: Yes.

Mr. Burke: Shipping is an international business involving the carriage of cargo and passengers between more than 100 separate sovereign states. A single voyage from one port to the next may involve a ship passing through the waters of many coastal states.

There is no supra-national body which can legislate for all the waters of the world any more than for the air above them or for outer space. Thus the only two possible ways of creating any laws for shipping are...

(i) separate legislation by each separate coastal state;

(ii) international agreements freely arrived at by governments and freely accepted by them.

Where national legislation affects shipping only incidentally, e.g. the ordinary criminal law, it is inevitable that there will be some variations between different local laws. Where, however, legislation is peculiar to shipping and affects foreign as well as national flag vessels it should, as far as possible, be on lines internationally agreed. There are three reasons:

(a) The practical consequences of a new bill are not always fully appreciated by its authors. Examination by world experts at IMCO can test the soundness of new ideas and proposals; those which receive their endorsement will normally be readily accepted by both governments and shipowners. As a consequence, the required measures may be widely introduced even before the appropriate convention has come into force.

(b) However reasonable individual national legislation may be, even minor differences between the laws of states can cause major practical difficulties for world shipping and consequently world trade.

(c) Even if national laws are identical, there may, in the absence of any international agreement, be serious problems owing to the fact that a shipowner instead of satisfying one state (the flag-state) must satisfy separately and individually every coastal state to which his ships may go. For example, shipowners have said that they can live with the compulsory insurance provisions of the International Convention on Civil Liability for Oil Pollution Damage; they could not live with a situation where every coastal state had to be separately satisfied of a ship's financial responsibility—even if the requirements under national legislation were less stringent than those in the Convention.

For these three reasons, shipowners' constant theme is that shipping is an international business and all problems, except the most local, should be resolved internationally. If a country "goes it alone" the result it desires may not be achieved; even if it is achieved it may be

only at a disproportionate cost to its own economy. For example, if a country requires vessels to be designed and equipped in a way which no other country demands, fewer ships will be able to serve it, and those that will have greater expenses to recover.

Extra costs, whether of equipment, running expenses or liability are likely to be passed on through freight rates to the importer and exporter. Where those costs arise from action in one country only, the resultant burden on that country's trade is inevitably much higher than where the cost arises from any international agreement. It is occasionally suggested that the plea for international agreement is an attempt to delay unpleasant legislation. It is not; shipowners have a long record of anticipating legal requirements and acting without delay on items on which there is international agreement. For example, the load-on-top system was widely introduced well ahead of the necessary amendments to the Oil Pollution Convention 1954, and shipowners have complied with IMCO's traffic separation schemes without waiting for their formal adoption by the IMCO Assembly. In the field of liability for oil pollution damage, tanker companies representing over 80 per cent of the world's tanker tonnage have, through TOVALOP, voluntarily accepted a responsibility over and above their legal liability.

Against this background shipowners feel justified in calling on governments to stick firmly to international solutions to the problems of oil pollution. This means for example that national legislation or liability should be based on the International Convention on Civil Liability for Oil Pollution Damage and in due course, on the proposed Convention on an international compensation fund.

Meanwhile, full advantage can be taken of the voluntary schemes set up by the industry.

Other measures against oil pollution have been agreed internationally and shipowners welcome national implementation of the International Convention on Oil Pollution 1954-69—when the shore reception facilities envisaged in the Convention have been provided—and of the International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties.

In other words, honourable senators, we sincerely hope this committee will recommend that the Canadian Government take prompt action to provide the impetus necessary to bring about as soon as possible an acceptable international agreement.

You may recall that the Minister of Transport, Mr. Jamieson, said in part, before the Special Committee on Environmental Pollution of the House of Commons, and the reference is to the Proceedings of that committee, Issue No. 2, page 2:30, dated Tuesday, November 3, 1970, and I quote:

> We still are seeking international agreement. We have indicated, and I have said in the House, that if we can get an international agreement that is satisfactory we will be glad to eliminate this legislation, but in the meantime we put this in place as really what was the best that we could do as a single country.

It would seem that the minister felt that this is stopgap legislation which is now being dealt with, and he recognizes the desirability and need of a satisfactory international agreement.

Again it is our desire that this committee endorse this view and at the same time emphasize the urgency of the matter when submitting its report.

Mr. Chairman, that is all I have to say on behalf of the Canadian Chamber of Shipping. However, the Canadian chamber is a constituent member of the International Chamber of Shipping and in this morning's mail I received a written submission from the International Chamber of Shipping.

Copies of that submission were made available to the clerk of the committee this morning and I presume that they have been circulated to all members of the committee.

I must point out that our own members have not seen this submission and therefore I am not empowered to comment on it. Moreover, I would not be in a position to comment on it in any event, having only just received it.

However, if it is agreeable to the committee, I would respecfully suggest that the ICS submission be written into the record of this committee. The International Chamber of Shipping sent a delegation to Canada in November to appear before the House of Commons committee and at that time they advanced their views at some length. They would like to have participated in this discussion today, but because of the time element they were unable to do so. Hence the written submission. If you can see your way clear, Mr. Chairman, to reviewing the views of the ICS as submitted in their written brief, we would be very grateful.

That is all I have to say, Mr. Chairman.

Senator Flynn: There is no objection to this, but would the witness summarize the conclusions of this submission? Do you recommend anything specific as far as this legislation is concerned, or does it contain only general observations on the need to have international agreement on the matter?

Mr. Burke: I gather, Senator Flynn, that you do not have a copy of the paper I am referring to.

The Acting Chairman: It is marked "Submission by The International Chamber of Shipping in Connection with Bill C-2, An Act to Amend The Canada Shipping Act".

Maybe, Mr. Burke, for the benefit of the committee you might read from page 5 under the heading "General". There you set out your summary and it is not very long.

Mr. Burke: Well, I am conscious of the time and I have noticed that you had many questions to ask of the witnesses who have appeared and I was merely attempting to be brief. However, I shall be glad to read that section.

Senator Flynn: I think the answer is the one I suggested, that is that you recommend international agreement in dealing with this particular problem.

Mr. Burke: That is true, senator, but they have in fact made separate specific observations with respect to particular facets of this section of the bill.

Senator Flynn: Is it a very specific amendment they recommend?

Mr. Burke: They have suggested changes, but they have not put forward any particular amendments as such. If there is time, Mr. Chairman, I could read the paper.

Senator Smith: This can form part of the record anyway. If it is of interest and help to the committee to have a general summary read into the record, well, that is fine.

Senator Flynn: If there are any specific important amendments proposed in this, I would like the witness to underline them. I see one item there which says:

> Section 4 of the Bill now provides that the Act shall come into force on a day to be fixed by proclamation but makes special provisions for Section 745 of the Canada Shipping Act.

That is a matter of procedure, and I think you need not discuss that. Mr. Macgillivray can look into that. So I would not call that an amendment of substance but is there anything else?

Senator Rattenbury: I think there is a little nitpicking involved here.

The Acting Chairman: Is it agreed, honourable senators, that this submission shall be printed as an appendix to today's report?

Hon. Senators: Agreed.

(For text of submission, see Appendix "F")

Senator Burchill: Where are the headquarters of the International Chamber of Shipping?

Mr. Burke: In London, England, sir.

The Acting Chairman: Now, honourable senators, as we agreed this morning, perhaps we could hear from Mr. Macgillivray.

Senator Flynn: I have a question. I think everybody is in agreement with the witness that international agreement in this field is very important because most of the ships operate on an international basis. Therefore there is nothing we can do about it in this particular legislation. Our terms of reference in this committee are to consider the bill and see whether we can amend it. Do you see how we could implement your recommendation in order to have an international agreement in this bill? I do not see how we could do that. We can express a hope which would be neither pious nor useful because I think the Government is very much aware of its responsibilities to try to reach some agreement with all nations concerned. But is there anything specific that we could do with regard to this bill to implement your recommendation?

Mr. Burke: I think, Senator Flynn, you will recall that the Special Committee on Environmental Pollution in the House of Commons had no less than, I think, 14 sessions. They very thoroughly examined the bill and there were many contentious points raised. Some were solved, some were probably partially solved, but others were not. In the little time before this committee today it has been brought to light, very emphatically, that this is a complex piece of legislation.

Senator Flynn: I agree.

Mr. Burke: I think we all agree on this.

The Canadian Chamber of Shipping—as opposed to the International Chamber of Shipping—as Canadians we endorse the principle and thought behind it, and we are in sympathy with it; but we can see the complexities arising out this and we are not commenting on the bill itself or any particular part of it, but rather what we are saying is that this more than brought to light the problems that this legislation will be faced with, and we hope that your committee will recommend to those responsible that they pursue the idea of reaching a satisfactory international agreement as quickly as possible, without affecting this legislation.

Senator Flynn: Maybe it would be the wish of the committee to do that, but I have some doubt that we have the authority to do so. In any event, I wanted to make it clear that it was your hope.

Now, with regard to variation between the responsibility of shipowners and cargo owners from one country to the other, of course, this is not the only field where you find this variation. You have it for the car owner who travels from one country to the other, or even from one province to another. Naturally, everyone hopes that there is some similarity between the rules applicable in such instances, but these differences are not necessarily insurmountable. In due course, I suppose once we have established a new code or a new rule respecting the liability of shipowners and cargo owners in the matter of pollutants, we will move towards uniformity, but this can hardly be achieved immediately. It is a process that will normally take place, and I can assure you that it is the wish of anyone who is familiar with this problem that this should occur as soon as possible. However, I am doubtful that we can do very much about it with this particular bill that is before this committee.

Mr. Burke: In my ignorance, Senator Flynn, I was under the impression that this committee could make recommendations along the lines I suggested—that is, to speed up the machinery to develop the international agreements which I think you concede are desirable. We are faced with the situation now, in the States, for instance, where you have legislation in Florida, Massachusetts, Michigan, Washington and California, and everything is at sixes and sevens and no one knows where they stand.

Captain Hurlcomb very ably illustrated the problems facing us in our relationships with the United States in so far as the international boundaries or the contiguous zones are concerned. These are problems that face us, and hopefully they will be surmounted. As you say, they can be surmounted, but in the long run it is evident from

where I sit that when an international agreement that is acceptable to Canada is brought into force, then we shall have made a big step in the right direction, and the sooner the better.

Senator Flynn: I do not want you to misunderstand me. The evidence that we have heard and which is included in our record will certainly be helpful to the Government and to the department concerned. What I was suggesting is that we can hardly make any specific amendments to the bill based on your general observation that there should be unity of legislation in this matter between countries.

Mr. Burke: Nor was that my thought, senator. I was not referring to any specific part of the bill but rather to it in general.

The Acting Chairman: Thank you, Mr. Burke. We have now reached the stage where a number of important, complex and contentious points have been raised. We shall hear from Mr. Macgillivray. I do not envy him because I do not think that in the time available this afternoon he can answer in detail all the questions raised, but I am sure that he will be able to bring some light to some of them.

Senator Flynn: He could come back next week.

The Acting Chairman: Yes. It is the intention of the committee to adjourn later this afternoon and to hold further meetings next week. That will give Mr. Macgillivray an opportunity of discussing with the minister the points which have been raised. Mr. Macgillivray you may proceed.

Mr. Macgillivray: Thank you, Mr. Acting Chairman. It is clear to me that honourable senators have shown an interest in some of the points raised and it would, of course, be helpful to me, in discussing the matter with the minister, to be able to indicate whether the members of the committee appear to support any or all of the proposed amendments.

Senator Flynn: May I suggest that we would support any amendments that are valid. We are trying to do our best. We are not prejudiced at all.

The Acting Chairman: I am pleased to hear the honourable senator say that and I hope he is speaking for all members of the committee.

Senator Flynn: Apparently Senator Rattenbury wanted to be excluded from my remarks.

Mr. Macgillivray: It is, of course, a very complex bill and we have recognized this fact from the outset. We are breaking new ground and it would be surprising if at our first attempt we produced a perfect bill.

I will try to go through the points that I made a note of as they were raised. Mr. Brisset raised the point that we do not have in this bill the procedural provisions for an action for limitation. He suggested that we should include provisions equivalent to those contained in section 658 and applicable to the ordinary action for limitation. That is a point on which I will have to take advice from officers of the Department of Justice. Certainly we do not wish to leave a hazy area here that might involve a good deal of trouble and perhaps protacted litigation.

Senator Bourget: May I interrupt Mr. Burke. He mentioned section 658. I should like to have a copy in order to follow it.

Senator Flynn: C'est un peu le principe de la loi de faillitte.

Mr. Brisset: Oui.

Mr. Macgillivray: Section 658 is marginally noted as power of the court to consolidate claims. This is the provision under which it is possible for the shipowner, firstly if liability has been proven and he then wishes to take advantage of the limitation provisions of the act, to apply to the court for limitation. In order to do so, he pays into court the total amount of his limitation fund and the court distributes it according to certain rules.

Senator Flynn: If the amount of the claim is higher than the amount deposited, there is a proportionate apportionment.

Mr. Macgillivray: Yes. Mr. Brisset and Captain Hurcomb both have raised the problem respecting claims in another country. It is almost certain that any claim in another country arising out of a pollution incident would be claims in the United States arising out of an incident in any of the contiguous waters, which is on the lakes, on the British Columbia coast and around the Bay of Fundy.

We are in a very difficult position in this regard. As Mr. Burke has pointed out, when the equivalent legislation was before the United States Congress an attempt was made to have a provision inserted that would allow for a compatible regime in the two countries. That was not accepted by the legislators in that country. I will discuss this with the minister and the draftsmen of the Department of Justice. There may be a possibility of inserting a provision to allow us to provide for compatibility between the two regimes.

Mr. Brisset suggested that we include a provision to incorporate article V, paragraph 5 of the Brussels Convention on civil liability. This would allow the shipowner or the cargo owner to claim his own expenses in taking preventive action or clean-up action out of his own pollution limitation fund.

I realize that the thinking behind this is that it would give an incentive to shipowners to take immediate action, so as to prevent a spread of the damage and thereby a greater catastrophe than would exist.

Senator Pearson: Would that not be left to the insurance company?

Mr. Macgillivray: Yes, senator; the insurance company would pay it, but it would be the shipowner.

Senator Pearson: The shipowner has to do the cleaning up.

Mr. Macgillivray: Well, whatever arrangement they make between themselves as to who actually hires the

salvage people and labourers, and so on, really does not matter for this purpose.

Senator Rattenbury: It might cost less.

Senator Flynn: It may, but if they spend all the money trying to remedy the damage and do not succeed, the real sufferers will get nothing.

Mr. Brissett: You will only recover the proportion, because let us assume you spent $1 million, the claims of $1 million, and the limit of $1 million, the claimants will receive half...

Senator Flynn: Only in proportion.

Mr. Brisset: Only in proportion.

Senator Flynn: 50 per cent.

Mr. Brisset: It all depends how the proportion works out.

Senator Flynn: I see. You do not suggest that they should be the first...

Mr. Brisset: No, no, they will rank equal to the other claims and recover 10 per cent as the others, or 20 or 50 per cent.

Senator Flynn: That seems more sensible.

Mr. Macgillivray: On this point the minister has said on a number of occasions that he was not satisfied with the results that came out of Brussels in the form of this convention and another.

There is perhaps a natural resistance, on the part of people who want to see that people who suffer damage are properly compensated, to find that when they do provide for setting up a fund to reimburse them, then the person who caused the damage is still going to have a share in that, to the detriment of those who are not going to be fully reimbursed.

The mere fact that that limitation applies will indicate that someone is not going to recover all his damages.

We did feel as to the whole tone of the convention that was produced in Brussels, that there was just too much of an effort there to protect the shipowners, sometimes at the expense of the people who are going to be damaged by the pollutions incidents.

However we will certainly be bringing this to the attention of the minister.

Mr. Brisset, by the way, in discussing that one, attributed to me that I had said that this was the intention in the beginning. I do not recall having said that. I am not certain that it ever was our intention to go along with that item in the Brussels Convention.

He also suggested, respecting Article VI, paragraph 1 of the convention that once a limitation fund is set up and the moneys are paid into court, that persons having a right arising out of the incident would only be able to recover from that fund and could not attack other assets of the shipowner.

This is purely a procedural matter, I think, and is one that I believe is already the practice in relation to limitation matter in other fields. Once the money is paid into court that is where the claims are satisfied from.

Senator Flynn: There is a limitation or there is none.

Mr. Macgillivray: Concerning Article VII, paragraph 8 of the convention, he suggests that the insurer should have the same defences as the insured. In previous discussions on this point with the officers of the Department of Justice, I have been informed that they feel those defences are there, that that is implicit in the act. I will raise the question again, in any event.

As to making arrangements with the United States for a situation that will occur when there is an accident in contiguous waters, I feel it is quite clear that such discussions will have to take place between the two governments. There is no question that we will be proceeding with those discussions as soon as time permits; but whether we could make any provision in the bill that would anticipate the results of these discussions is really another question.

Mr. Langelier, speaking for B.P. Oil Limited, spoke of section 744(1)(b) and in response to a question from yourself, Mr. Chairman, Senator Flynn said that the word "wholly" should be removed from line 29 on page 13 so that discharge of the pollution gave rise to the liability is "wholly" caused by these things should instead read "in whole or in part".

Senator Flynn: My suggestion was not as accurate as that. It was with respect to paragraph 2(i). It seems to me that an anachronism should cause a damage by a person other than any person for whom the wrongful act or omission. I did not like the idea of the intent to cause damage. Sometimes you do something which is a negligent act without intent to cause damage. It seems to me that the rule of responsibility for any fault should be recited therein and that the idea of the intent should be removed, because I may hit someboy without the intention of killing but if I do kill I have at least a civil responsibility if I have not a criminal responsibility.

Mr. Macgillivray: Here is where we get into one of the unique features of this legislation and one which I do not think we should depart from. It is, by the way, not the first occasion on which this type of liability has been imposed. The idea of absolute liability first came up in connection with nuclear ships ten years ago when an international convention on that subject was reached. Then there was legislation before Parliament a year ago, which was passed, I should say, dealing with liability for nuclear damage. The concept is that when there is a possibility of massive damage being done by a single incident you should focus liability on the one spot and on a person who can insure.

Where you have a 200,000 ton tanker posing such a threat to people and to the ecology, and it is quite clear that in an accident the damage could be the result of the negligent act of some person on board a 2,000 tons coasting vessel, the damage would be caused with the complete innocence of the owner of the tanker and of all the people aboard it. They might take all the precautions in the world.

Senator Flynn: You were saying that it would be a servant of the owner there?

Mr. Macgillivray: No, the owner and his servants are completely blameless. The accident is caused by the negligence of a third person. In that case, if we do not have some provision here requiring that the insurance be carried in some way tied in with that tanker and its cargo, then there will never be recovery because the owner of the 2,000 ton coaster is very unlikely to have sufficient assets. He is certainly not going to be carrying insurance in that amount. His liability is limited to half of the liability that is imposed here under the ordinary rules of liability and it is just not going to be his practice to carry liability insurance to cover himself for the type of damage he could do if collided with a supertanker.

So recognizing the practicalities at Brussels this was accepted by the shipowning nations, the nations that own these supertankers and that will be owning them. It is accepted by all concerned that you must have an artificial regime. This is what absolute or strict liability is. It is an artificial regime so that you can focus liability on the one spot where it can be insured.

This is why those exemptions that are shown in section 744 are there.

Senator Flynn: Is this a reproduction of the Brussels Convention?

Mr. Macgillivray: It is not verbatim, but it does contain the idea.

Senator Flynn: What if somebody comes aboard a tanker and deliberately sets fire to it or arranges to sink the vessel?

Mr. Macgillivray: You could conceive of sabotage, yes.

Senator Flynn: Sabotage, yes, for instance.

Mr. Macgillivray: That is an exemption.

Senator Flynn: That would be an exemption?

Mr. Macgillivray: Yes.

Senator Flynn: But if a tug, for instance, is badly steered and hits the vessel, that would not be a case where you would be exempted from your liability.

Mr. Macgillivray: No.

Senator Flynn: The distinction is rather artificial or strange, and is productive of rather contradictory results.

Mr. Macgillivray: This is one of the reasons we would have preferred at the Brussels Convention not to see this exception for an act of sabotage, but it is there and you do not always get what you want in these things. We would have preferred that there should be no exceptions.

Senator Flynn: This is a national law, is it not?

Mr. Macgillivray: That is true, but there is a question of how much we are laying ourselves open to danger because it seems pretty clear that any of these three exceptions are likely to be very rare in their occurrence.

Senator Flynn: Then you are supporting the idea that there should be uniformity of responsibility of all parties to the Brussels Convention?

Mr. Macgillivray: Well, we are, as the Minister has said, anxious to see a workable international regime in this field, yes, and, as you know, the other witnesses have said the work is now being done in an attempt to create an international claims fund. One of the series of meetings concluded on Friday last and they will be resumed next month. If a satisfactory international regime does come about, we will be glad to be in it, as the Minister has said.

Senator Flynn: And to amend the Act?

Mr. Macgillivray: Yes. I think Captain Hurcomb quoted him on that just a few minutes ago.

Mr. Langelier has also asked that the provisions relating to the fund be brought into force by proclamation so as to allow us to study the CRISTAL scheme, and he pointed out that CRISTAL would not be available to Canadians because of unlimited liability. I think it is clear there is limitation of liability in this bill and I did not quite understand that. However, this matter of bringing the fund provisions into force at a later date—this is a matter I will bring up with the Minister. As you probably know the CRISTAL scheme was not brought into being until after this bill was being considered before the committee of the House of Commons, and this is a thought that, of course, could not have occurred to us while the bill was being drafted.

Mr. Phillips has asked that there be an amendment so that claims for damage by pollutants other than oil would not be payable out of the fund until a scheme has been worked out for having payments into the fund in respect of such other pollutants. I cannot give any indication of what the position would be on that, but I will bring it to the attention of the Minister. He has also suggested that the fund should be subject to the same exceptions set forth in section 744, subsection (1), that is that recovery out of the fund should not be in respect of damage done as a result of these exceptions. But really, this is one of the purposes of the fund, that is to recognize that there will be cases where people will not have the right of action and will not have any way of collecting compensation for their damage. This is one of the purposes of setting up the fund and I think we would not be inclined to see any change in that aspect of the fund.

On the question of payments being made into the fund when oil is shipped more than once, my inclination is that the minister would probably not agree to a change in his regard because this is a question that has been considered before.

In conceiving the idea of this fund it was recognized that it is not going to be a perfect plan, but every time oil is shipped through our waters it is posing a new hazard. If it comes in as crude to Port Hawkesbury and is refined and then shipped again as stove oil, it is presenting a pollution hazard on both those voyages, so the decision was made it would pay on both those voyages. It is perhaps unfair that payment will be made in respect of a cargo of oil that may only travel 20 miles of

our waters while another cargo will go all the way from Montreal up in the lakes a considerable voyage. However, no scheme is going to be perfect, and it has been recognized that this may have an economic impact on the oil industry, and it has been one of the undertakings that before the Order in Council is passed setting the amount of the contribution to the fund there will be a study of the economics of it, and probably discussion with the industry.

He also suggested that there should be a limit put on the amount of the fund—let us say, $10 million. This is a matter that was recommended in the committee of the other place and it was brought to the attention of the minister and was not accepted. We just do not know how much the fund would be, and if it is only going to build up at the rate of a maximum of $3 million a year, even if the full 15 cents per ton is charged, I do not think it is likely to build into unduly high proportions before we would have a chance to revise the figure downwards for the amount of the contribution or to do away with the contribution for a period of time.

Captain Hurcomb suggested that the negligence of a third party should be an offence, which is the point we have just finished discussing, and I feel it would destroy the whole concept.

He calls for a right of action—and this question was brought up before also—by the cargo owner against the ship where the shipowner has been negligent, but Captain Hurcomb says that should only be if the shipowner is at fault. I have taken note of that and I am not sure, if both are carrying insurance and if there is fault on neither side, that it would not be preferable just to let the liability be equal if they both have the funds to pay.

I have already dealt with the question of compatibility with United States legislation. We do not require the provision in here that would allow us to negotiate with the USA. This can be done. We will be looking at the possibility of putting in a provision that would be equivalent to th one that Captain Hurcomb read as having been suggested before the United States committee.

On the question of proof of financial responsibility in respect of US ships passing through Canadian waters, we of course have the possibility of ships passing through our internal waters, through our lakes, or passing through our territorial sea off our coast. There certainly was the thought in our minds that we would have difficulty with the international community if we imposed on ships passing our coasts any requirements for paying into the fund. Any requirement to put up proof of financial responsibility would obviously be attacked by some people as an infringement of the right of innocent passage through a territorial sea, but the conditions are different when we speak of internal waters, and we will take a look at that aspect.

Senator Flynn: Whether or not we request this certificate, do you not agree that liability would be the same, and any government or any Canadian citizen could sue a ship which discharged a pollutant outside our waters but which caused damage to our shores or to our territory?

Mr. Macgillivray: There may be some difficulty over this, when we look at the application section, subsection 2 of section 736 on page 3. The regulations are intended to apply to Canadian waters other than Arctic waters and to ships within those waters.

I am not certain that that excludes a claim against a ship if the release of the oil is outside of our waters.

Senator Flynn: I can see that section 737 would not apply outside of Canadian territory, but section 743 does not make that distinction.

Mr. Macgillivray: I am not certain that this excludes claims against a ship where the incident causing the release takes place outside Canadian waters and the damage done by the pollutant occurs within Canada.

Senator Flynn: From the standpoint of enforcement of the bill I think this is a very important question. May I suggest that you inquire of the Department of Justice or from other officials the import of this section.

Mr. Macgillivray: Yes, sir; I will ask for legal opinion on that.

I believe I have dealt with all the points raised except those by Mr. Lewtas for Imperial Oil. To a certain extent I have dealt with the one in connection with section 744, where he suggested the addition of a subsection (6), to allow the owner to recover against the shipowner if the latter is negligent, although there is in his draft amendment a provision . . .

Senator Rattenbury: To which one are you referring?

Mr. Macgillivray: It was a draft amendment suggested by Mr. Lewtas to section 744, a new subsection (6) to be added.

The Acting Chairman: It is in Schedule A.

Mr. Macgillivray: As he pointed out, if there is fault on the part of the shipowner or his employees and no fault on the part of the cargo owner, he feels that the cargo owner should be able to recover, have a right over against the shipowner for any damages he is forced to pay.

There is a point in his draft which I think might have implications of which I am not too clear. He says in the draft that this would be unaffected by any provision in any charter or contract entered into before the coming into force of this subsection. This would have the effect of amending existing charter parties which might have been entered into under the law of and in a different country. I am not sure what the implications would be; this would require careful study.

His other point is a proposed amendment to section 744 (4), the addition of wording to subparagraph (d) to indicate that where the shipowner loses his right to limitation by reason of his personal fault or his being privy to the fault of his employees, the cargo owner should not lose his right of limitation. This, on the face of it, sounds reasonable.

Senator Flynn: That is not my interpretation of the former amendment to section 744(6). I think what is

proposed here is that the owner of the cargo has a right to recover from the shipowner, even if the shipowner is not faulty or negligent. This right does not depend upon proof of fault or negligence.

Mr. Macgillivray: Yes; this was the point that Captain Hurcomb questioned.

Senator Flynn: I was suggesting that at least there should be fault or negligence on the part of the owner, but, of course, this would be restricted to some extent if the shipowner had the right to invoke the limitation of the liability. It could be affected by that.

I have made a note that I find it difficult to understand the statement on page 4 of the paper submitted by B.P. Oil Limited:

> Thus, the passage of Bill C-2 in its present form will have the effect of denying to persons in Canada the benefits of the CRISTAL fund...

I question whether this is so, until such time as the regulations are made setting up the claims fund and requiring payments to be made into it. Until payments are made into the claims fund it is not in existence.

Senator Rattenbury: Most of my questions have been answered, and Mr. MacGillivray has made notes of them. I find myself in agreement with Mr. Phillips in many instances in his submission, particularly from his viewpoint where they are cargo owners rather than owners of ships. It is not clear to me why so much stress has been made in this legislation by the drafters on the liability of the owners of the cargo, where you have double liability. Is there a need for that double liability?

Senator Flynn: Because of the dangerous nature of the cargo—a sort of joint venture.

Senator Rattenbury: And/or, but not necessarily both. Again I am unsure in my mind as to why the drafters of the legislation had confined the pollutant to oil and petroleum and not chemicals or other possible pollutants.

The Acting Chairman: That question could be answered at the next meeting, Senator Rattenbury.

Senator Flynn: The Governor in Council may make regulations on any one or more of the pollutants specified.

Mr. Macgillivray: Well, we already have regulations regarding oil. We are now working on regulations for sewage and garbage.

Senator Rattenbury: At any rate the fund is certainly limited to oil.

Mr. Macgillivray: There is provision that regulations may be made extending the obligation to pay the levy, and that may be extended to other pollutants besides oil.

Senator Rattenbury: It may be?

Mr. Macgillivray: Yes.

Senator Rattenbury: I might say that I found myself in agreement with one of the witnesses who pointed out that the establishment of CRISTAL was taking place on April 1 and that perhaps those applicable sections of the bill could be proclaimed. Those are my main questions, Mr. Chairman.

The Acting Chairman: Thank you, Senator Rattenbury. I am sure that Mr. Macgillivray will have the answers to those points at the next meeting.

If it is convenient to members of the committee, could we have our next meeting next Wednesday at 10 o'clock in the morning?

Hon. Senators: Agreed.

The committee adjourned.

APPENDIX "A"

PROPOSED AMENDMENTS TO BILL C-2

I

Add the following Sub-sections to Section 744

"6) Where any civil liability is alleged to have been incurred under Section 743 by the person or persons described in paragraphs a) or b) of Sub-section 4 hereof and where such liability is limited under paragraph c) of said Sub-section 4 and several claims are made or apprehended in respect of that liability a Judge of the Federal Court may, on the application of that person or persons, determine the amount of his or their liability and distribute that amount reteably among the several claimants; such Judge may stay any proceedings pending in any Court in relation to the same matter, and he may proceed in such manner and subject to such regulations as to making persons interested parties to the proceedings, and as to the exclusion of any claimants who do not come in within a certain time, and as to requiring security from the person or persons described in paragraphs a) or b) of Sub-section 4 hereof, and as to payment of any costs, as the Court thinks just. In making a distribution under this Sub-section of the amount determined to be the liability of the person or persons described in paragraphs a) or b) of Sub-section 4 hereof, the Court may, having regard to any claim that may subsequently be established before a Court outside of Canada in respect of that liability, postpone the distribution of such part of the amount as it deems appropriate."

"7) If before the Fund is distributed the person or persons described in paragraphs a) or b) of Sub-section 4 hereof or any of their servants or agents or any person or persons providing them insurance or other evidence of financial responsibility have as a result of a discharge of pollutant in waters to which this Part applies paid compensation for actual loss or damage incurred by those referred to in paragraph d) of Sub-section 1 of Section 743, such person or persons shall, up to the amount they have paid, acquire by subrogation the rights which those so compensated would have enjoyed under Section 743; claims in respect of costs and expenses reasonably incurred or sacrifices reasonably made by the person or persons referred to in paragraphs a) or b) of Sub-section 4 hereof voluntarily to prevent or minimize pollution damage shall, if they were incidental to the taking of any action authorized by the Governor-in-Council under Section 743 rank equally with other claims against the Fund."

"8) Where the person or persons described in paragraphs a) or b) of Sub-section 4 hereof after the discharge of a pollutant in waters to which this Part applies, have constituted a Fund in accordance with Subsection 6 hereof and are entitled to limit their liability,

a) no one having a claim under paragraph c) or d) of Sub-section 1 of Section 743 arising out of the discharge of a pollutant in waters to which this Part applies shall be entitled to exercice any right against any other assets of that person or persons in respect of such claim.

b) the Court shall order the release of any ship or other property belonging to that person or persons which has been arrested in respect of a claim for their costs and expenses and the actual loss or damage referred to in Section 743 arising out of that incident and shall similarly release any bail or other security furnished to avoid such arrest."

The following should be added to Section 745 at the end of Sub-section 2

"In such case the Defendant may, irrespective of the actual fault or privity of the owner of the ship or of the owner of the pollutant as described in paragraphs a) or b) of Sub-section 1 hereof avail himself of the limits of liability prescribed in Sub-section 4 of Section 744. He may further avail himself of the defences which the owner of the ship or the owner of the pollutant would have been entitled to invoke under Sub-section 1 of Section 744. Furthermore, the Defendant may avail himself of the defences that the pollution damage resulted from wilful misconduct of the owner of the ship himself or the owner of the pollutant, but the Defendant shall not avail himself of any other defences which he might have been entitled to invoke in proceedings brought by the owner of the ship or the owner of the pollutant against him. The Defendant shall, in any event, have the right to require the owner of the ship or the owner of the pollutant or both as the case may be to be joined in the proceedings."

3. "The insurer or other person providing evidence of financial security shall be entitled to constitute a Fund in accordance with Sub-section 6 of Section 744 on the same conditions and having the same effect as if it were constituted by the person or persons referred to therein. Such a Fund may be constituted even in the event of the actual fault or privity of that person or persons but its constitution shall in that case not prejudice the rights of any claimant against that person or persons."

APPENDIX "B"

BRIEF of The Petroleum Association for the Conservation of the Canadian Environment (PACE)
To the Special Committee of the House of Commons on Environmental Pollution, in connection with Bill C-2, an Act to amend the Canada Shipping Act

PACE

1. PACE is an Association of the following Canadian oil companies:

BP Oil Limited
Golden Eagle Canada Limited
Gulf Oil Canada Limited
Husky Oil Ltd.
Imperial Oil Limited
Irving Oil Company Limited
Pacific Petroleums Ltd.
Petrofina Canada Ltd.
Shell Canada Limited
Standard Oil Company of British Columbia Limited
Sun Oil Company Limited
Texaco Canada Limited

The objects of the Association are set out in Schedule A, but briefly they are to deal with environmental problems pertaining to the petroleum industry.

2. The members of the Association account for over 90 per cent of all imports and of all domestic marine shipments of oil products. Of equal significance in influencing their approach to Canadian environmental problems is the fact that these companies represent—through their employees, dealers and agents—over 90,000 families living in this country.

3. The companies have shown their concern about the Canadian environment not only by their establishment of this Association but also, and more tangibly, by anti-pollution expenditures over the last five years totalling more than $90,000,000. It is in this spirit that they have considered Bill C-2, but from their collective experience with problems of this nature they regard it as their responsibility to remind the members of this Committee that to an oil company the costs of pollution control are costs of production, which in our competitive economic system are inevitably reflected in the prices of petroleum products. In estimating the economic effect of this Bill none of us can overlook its impact on the Canadians who use petroleum products.

Association's Interest

4. The members of this Association support the objectives of Bill C-2. They wish to stress in particular the importance of prevention of accidental discharge as the best method of combatting oil pollution, and for this purpose they pledge their cooperation with all reasonable regulations designed to impose high standards of equipment and procedures. They would go further and propose the preparation of a national contingency plan, to ensure that in the event of a major incident there could be immediately deployed the most effective combination of personnel, material and techniques—contributed by both government and industry.

5. The Association also agrees that the Bill's compensation provisions should be comprehensive in their coverage, and provide reimbursement for all direct losses and expenses—including clean-up costs—caused by a pollution incident. It is the proposed method of implementing this compensation which causes us concern—and the following sections of this Brief will explain the reasons for that concern.

6. Although most of the members of this Association also have interests in ships as owners or charterers, their submissions will be as cargo owners, and the Brief will restrict its comments on the Bill accordingly. This restriction, however, in no way diminishes the importance of the matters to be covered by the Brief. The companies recognize that cargo owners are the subject of the very provisions of this Bill which distinguish it as such a radical innovation in maritime law—the provisions which would subject cargo owners to financial responsibility for damages caused to others by disasters at sea.

Insurance

7. This Brief makes a necessary assumption in connection with insurance. The development over the years of world shipping has depended on a concurrent evolution of maritime insurance. No sensible shipowner would commence a voyage unless fully insured. We understand that the insurance industry has already made representations to this Committee to the effect that tankers will be uninsurable in Canadian waters unless the liabilities imposed on shipowners by the proposed new sections 743 and 744 are modified as they suggest. As the most equitable method of sharing the burden is through the insurance carried by shipowners, we recommend that none of the suggested modifications be made unless the need for it is clearly established. However, we must assume that any modifications which are in fact proven to be necessary will be made. Any other result would be extremely detrimental to the Canadian petroleum industry, for it is most unlikely that a tanker will make an uninsured voyage into Canadian waters.

Nature of Submission

8. Bill C-2 adopts the principle—and in this regard goes significantly beyond any applicable international convention—that victims of marine pollution must receive full compensation. Shipowners will bear a heavy responsibility, but of necessity only up to the amounts to which they may limit their liability under traditional maritime law principles (and in this connection we understand that the Bill's present limitation provision will be modified so as to adopt the historical "fault or privity" language). In addition, and to achieve the full compensation principle, the Bill proposes contributions by cargo owners, through two radically new liability concepts:

Primary Cargo Liability

The Primary Cargo Liability would mean that to victims of pollution the cargo owner would have the same liability as the shipowner, on a joint and several basis.

Secondary Cargo Liability

The Secondary Cargo Liability would mean that cargo owners would maintain a Maritime Pollution Claims Fund in order to ensure full compensation to the extent that it is not obtained from the shipowner, or from the cargo owner under the Primary Liability.

Primary Cargo Liability

9. As stated earlier, the members of this Association support the compensation objectives of Bill C-2. However, they do not believe that in the attainment of these objectives there is any use for the Primary Cargo Liability, which they regard as wrong in principle, unnecessary and impracticable.

(1) The Primary Cargo Liability is wrong in principle, in that direct liability for damages to others is imposed upon the owner of a cargo who before the commencement of the voyage ceased to have any control over the cargo let alone the ship. As a matter of principle also, if the petroleum industry is to be subjected to responsibility irrespective of fault, that responsibility should be borne by the companies in the industry in logically allocated shares. The liability of any single company should depend on its overall usage of marine transport rather than on the coincidence that one of its cargoes happened to be carried by a particular ship at a particular time. To attempt to justify the liability—as was suggested before this Committee by an official of the Department of Transport—on the ground...

> "...that some incentive should be put on the charterers of ships to select safer ships...

demonstrates a remarkable lack of familiarity with world chartering markets, where all ships offered are correctly assumed to be insured and therefore officially classed as seaworthy and where the essential skill of charterers is to consider expeditiously all the relevant factors and to select the correct ship without the opportunity of actual inspection. It is the executive branch of government which should be encouraged in the enforcement of the special safety and financial responsibility requirements stipulated by the Bill. Moreover, the ability to shift part of his burden on a cargo owner could only tend to remove the safety incentives of the shipowner, who is uniquely in a position to maintain high standards for his ship and crew.

(2) The Primary Cargo Liability is unnecessary, for the other provisions of the Bill ensure that for all practical purposes in any disaster the shipowner will in fact pay the damages for which he is responsible—up to the statutory limit of his liability. Up to this amount he is certain to be insured—not only by universal shipping practice but also because under the proposed section 745 he is required to prove that he is so insured.

(3) The Primary Cargo Liability is impracticable, in that it will fail to achieve equity or consistency in the apportionment of financial responsibility among the various parties involved:

(a) The Bill contains no specific provision entitling a cargo owner who has made a payment under the proposed section 743 to seek reimbursement from the shipowner. It is difficult to understand why the section should not give an unqualified right to such reimbursement, not only because of the cargo owner's lack of control over the conduct of the voyage,but also because the entire liability under the section will already be insured by the shipowner in any event.

(b) Under the proposed section 743 the liability of the cargo owner—a completely passive party—varies with the ability of the shipowner to limit his liability. There is no discernible reason why the question of the "fault or privity" of the shipowner should affect the cargo owner's position.

(c) The principle of absolute or near absolute liability would expose a single oil company to liabilities which upon proper social grounds should not be borne by a faultless party. For example, if a pollution disaster results from the failure of a government-owned navigational aid, it is unreasonable that an individual oil company rather than the government should be responsible for the damages—yet this could happen if the company's claim over against the government were successfully defended by the government's invoking one of the normal liability exceptions.

Secondary Cargo Liability

10. For reasons indicated above, if oil companies are to be required to make contributions in respect of marine pollution, the most equitable procedure would be by way of payments into a fund, in substitution for and not in addition to the Primary Cargo Liability. The Association regrets that for this purpose Canada could not wait for the conclusion of a satisfactory international convention, which because of multinational participation would greatly reduce the payments required to be made by each company and would eliminate vexatious problems of jurisdiction and duplication.

11. In any event, the Association offers the following comments on the Maritime Pollution Claims Fund proposed by the Bill:

(1) Although the Fund is to be available for compensation for damages caused by any pollutant, its contributors will be owners of oil cargoes only. To avoid this obvious injustice, the Bill should be amended either to provide for contributions by owners of cargoes of pollutants other than oil and by shipowners whose ships carry substantial bunkers or that the Fund be not available for disasters caused by those pollutants.

(2) The new legislation should specify a maximum amount for the Fund. Experience would indicate that $10,000,000 would be adequate for this purpose.

(3) In order that funds which might be put to good use by Canadian industry are not kept idle in government accounts, a system should be devised whereby companies of proven financial responsibility need only be subject to a non-interest-bearing obligation

to make payments to the Fund as required to meet the purposes of the Fund obligations.

(4) If contributions to the Fund are to be computed on the basis of cargoes shipped, there should be an annual cumulative adjustment of the liablities of the various oil companies, so that the contributions in respect of each accident will truly reflect the respective uses of marine transport by the companies.

(5) The statute should more clearly describe inland voyages for the purposes of Fund contributions, so that one voyage will not be construed as several merely because of stopovers at intermediate points.

(6) If as a result of the representations by the marine insurance industry there are to be exceptions to the absolute nature of the liability to be imposed upon shipowners, the same exceptions should apply to liability on the part of the Fund. Otherwise the result would be that obligations proven to be too onerous for the insurers of the world would be imposed through operation of the Fund on the petroleum users of Canada. Moreover, these exceptions—such as acts of war, negligence of governments, wilful damage by third parties, etc.—are of such a nature that where they are invoked the damages should be borne by the community as a whole rather than by any particular section of it.

12. Before leaving our discussion of the proposed Fund we should remind the Committee that the world petroleum industry appears to be close to establishing a voluntary pollution fund of its own, through contributions by the various oil companies and to supplement where necessary the primary liability of the tanker owner. When this arrangement—to be known as CRISTAL—comes into effect it will probably afford greater coverage at lower cost than that of the Bill's Secondary Cargo Liability—therefore might be a useful object of study by this Committee before it recommends enactment of single-country legislation as radical as that contained in the Bill, and which may turn out to be merely a duplication of other coverage.

Conclusion

13. This Association therefore respectfully submits that Bill C-2 should be revised before enactment as follows:

(1) the proposed sections 743 and 744 should be amended to eliminate the Primary Cargo Liability; and

(2) the provisions of the Bill embodying the Secondary Cargo Liability through the Maritime Pollution Claims Fund should be amended as indicated in section 11 of this Brief;

and that in any event the Secondary Cargo Liability provisions should be enacted as temporary legislation only, pending the adoption of a satisfactory international convention or oil industry agreement designed to achieve comparable results.

This Association wishes also to commend the authorities in their stated intention to consult with industry representatives before settling the text of any regulations to be issued under the proposed new legislation. And in conclusion we refer to our earlier proposal for a national contingency plan, reaffirm our conviction as to its importance, and emphasize that to bring it into existence our members stand ready to extend every cooperation to the government.

Respectfully submitted,
THE PETROLEUM ASSOCIATION FOR THE CONSERVATION OF THE CANADIAN ENVIRONMENT
By:
President

Toronto, Ontario
November 30, 1970.

SCHEDULE A

Objectives of PACE

(a) To co-ordinate efforts within the oil industry in situations where joint action is the most effective method of solving environmental problems and where contingency plans to prevent or reduce damage to the environment from their operations are deemed to be desirable;

(b) to encourage exchange of technical information which will foster environmental improvements and develop support for research into new technology in environmental and ecological fields; and

(c) to provide a point of industry contact for the public and governments in all matters related to the protection of the environment and to assist government where appropriate in the formulation of policy and regulations concerning environmental protection as related to the oil industry.

BILL C-2—AN ACT TO AMEND THE CANADA SHIPPING ACT

Memorandum for Senate Committee on Transportation and Communications

It is submitted that in order to give proper effect to the intent of Bill C-2, as passed by the House of Commons on March 1, 1971, the following two changes are necessary:

1. A cargo owner who is required to pay damages for pollution should have a right to reimbursement from the owner of the ship which carried the cargo. For this purpose section 744 should be amended by deleting the last five lines of subsection (1) and adding a new subsection (6), as set out in Schedule A hereto.

2. The Bill now provides that the "fault of privity" of the shipowner will deprive the cargo owner of his right to limit his liability. The liability of the cargo owner should not vary according to the personal blameworthiness of a shipowner over whose conduct the cargo owner has no control. Section 744 should therefore be amended by an addition to subsection (4) (d) as set out in Schedule B hereto, in order to provide that the cargo owner may limit his liability except where there has been fault or privity on the part of the cargo owner himself.

SCHEDULE A

BILL C-2—AN ACT TO AMEND THE CANADA SHIPPING ACT

Proposed New Section 744(6)

744. (6) An owner of a pollutant from whom any costs, expenses, loss or damage are directly recovered pursuant

to section 743 has the right in turn to recover the same from any owner of a ship who was jointly and severally liable therefor under the said section, and such right does not depend upon proof of fault or negligence on the part of the owner of the ship and is unaffected by any provision in any charter or contract entered into before the coming into force of this subsection. Nothing in this Part shall be construed as limiting or restricting any other right of recourse that a person liable pursuant to section 743 may have against any other person.

SCHEDULE B

BILL C-2—AN ACT TO AMEND THE CANADA SHIPPING ACT

Proposed Addition to Section 744(4) (d)

except that if, in the case of an incident resulting in the joint and several liability of persons described in paragraph (b), there shall have been such actual fault or privity on the part of one but not all of such persons, the amount recoverable directly from any such person on whose part there shall have been no such actual fault or privity shall be determined as though paragraph (c) were applicable,

APPENDIX "C"

IN THE MATTER OF BILL
C-2—AN ACT TO AMEND
THE CANADA SHIPPING ACT

Remarks submitted by BP Oil Limited to the Standing Committee of the Senate of Canada on Transport and Communications

SECTIONS 743 AND 744: LIMITATIONS ON LIABILITY

1. The cargo owners, under the provisions of Sections 743 and 744 of Bill C-2, may be made liable for an amount up to $14 million for each separate incident in respect of various costs and expenses, including all actual loss or damage sustained by the Crown or by any other person resulting from the discharge of a pollutant in the absence of any actual fault or privity on the part of the ship and to an unlimited amount in the event of actual fault or privity.

Apart from what we consider to be the serious inequity of placing such an onerous liability upon the cargo owner, we understand that he will be faced with the virtual impossibility of obtaining insurance for such unlimited liability, especially as the shipowners themselves will be unable to obtain such insurance in the first place. We take this opportunity to refer in passing to the statement made by the representative of the London Group of Protection and Indemnity Associations before the Special Committee of the House of Commons on Environmental Pollution on November 24, 1970 and reported in Issue No. 6:58 of the Minutes of Proceedings and Evidence of the Committee, which reads in part as follows:

> "...We repeat that the capacity of the world insurance market for oil pollution risks is limited in respect of each vessel any one accdent or occurrence, to approximately $14,000,000.00 U.S., ... therefore Bill C-2 as it stands even in isolation could not be fully insured."

Honourable Senators might recall the testimony of Mr. P. N. Miller, of London, England, called as a special witness before your Standing Committee on Transport and Communications on February 27, 1969 (No. 6 First Proceedings on Bill S-23, intituled: An Act to amend the Canada Shipping Act), who stated unequivocally as follows:

> "Mr. Shearer, sir, goes on to say in his statement that if unlimited liability were imposed on the shipowner by such legislation, it would be uninsurable. The position, as far as our group is concerned, would be that the shipowner would be uninsured as in respect of liabilities in excess of the amount to which the group and its re-insurers could provide insurance coverage. That figure may be between $10 to $15 million—somewhere in that region—but in excess of that figure a shipowner would not be insured; and your bill as it stands places upon the shipowner unlimited liability."

Mr. Miller further states:

> "Now any legislation on oil pollution is going to impose yet a further burden and I as the broker for this very big group whom I represent here today have had very, very careful consultation with insurance markets all over the world to discover what additional amounts can be insured for this additional liability. From our experience we are certain when we say there are certain figures beyond which we cannot and which the insurance market as it stands cannot go. Those figures are somewhere in the region of a limit of liability overall for oil pollution by itself—an additional liability of between $10 million to $15 million or somewhere between $71 and $100 per gross ton.
>
> "It is not that we do not want to insure it. It is simply that we cannot go beyond a certain figure."

Should you still deem fit, notwithstanding the representations made by the world insurance market, to hold cargo owners jointly and severally liable for occurrences such as are covered by Bill C-2, and this despite the various objections which have been made to this radical concept of placing liability on passive cargo; unequivocal provisions should be made affording the cargo owner the right to seek reimbursement from a shipowner when the latter is proven to be at fault, as the present wording of the last paragraph of Section 744(1) still leaves great room for doubt.

We welcome, under subparagraph (b) of Section 744(1), the inclusion of exceptions to liability drawn along the lines of those contained in the 1969 International Convention on Civil Liability for Oil Pollution Damage, but we note that shipowners and cargo owners could only plead in defense such exceptions when the discharge of the pollutant which gave rise to the liability was wholly caused by the occurrences set forth in subparagraph (b)(i), (ii) and (iii), but not when there has been contributory negligence even to the slightest degree. It is therefore our suggestion that Section 744(1)(b) be amended to provide for such an occurrence.

SECTION 745 (1): EVIDENCE OF FINANCIAL RESPONSIBILITY

2. Section 745(1) requires that evidence of financial responsibility satisfactory to the Minister of Transport be furnished by the owner of the pollutant in addition to the owner of the ship that carries such pollutant in bulk to or from any place in Canada. We submit that the necessity for liability to be placed upon the cargo owner or for the requirement for him to furnish evidence of financial responsibility to cover the same risk as that of the shipowner, is not only inequitable and unjust but unnecessary duplication.

SECTION 746: MARITIME POLLUTION CLAIMS FUND

3. We recognize that Canada did not wish to wait for the conclusion of a satisfactory international convention on liability arising from damage caused by spills of petroleum products, because possibly of the delays which may be involved in its ratification by the maritime nations of the world. We would have thought that because of its multinational participation, such a convention would have repaired the attention of our legislators as it would greatly reduce the payments required to be

made by each company and would eliminate vexatious problems of jurisdiction and duplication. Be that as it may, the world petroleum industry showed a high degree of responsibility in also recognizing that pending the coming into force of the international convention, dealing with tanker owner liability for oil spills and a supplementary fund supported by cargo interests it was not only important but urgent to establish an interim measures fund of its own to discharge the liabilities that might arise from oil spill accidents.

The creation of an oil industry voluntary fund known as CRISTAL (Contract Regarding Interim Supplement to Tanker Liability for Oil Pollution), has now been announced, whereby the new cargo owners' agreement extends the total dollar amount of coverage for each separate oil spill to $30 million, which can be paid to private individuals and corporations, both public and private, as well as to governments. This agreement, which has been signed by the leading oil companies of the world, will be effective April 1, 1971. It supplements the already existing and operating voluntary fund called TOVALOP (Tanker Owners Voluntary Agreement Concerning Liability for Pollution). These two funds are open to all tanker owners and oil companies and in fact count as their members the major tanker owners and oil companies of the world.

We urge that these funds be studied closely, particularly with regard to the advantages that they offer in relation to the availability of compensation for claims for pollution damage up to an aggregate limit of $30 million, so that no necessity arises for either an initial build-up of cash or a further accumulation after a claim has been settled, and the substantially lower costs that would be placed upon the Canadian economy. We suggest that the oil industry has met the challenge to which it has been exposed and should not be penalized as it is under the provisions of Section 757(1). Payments to the Maritime Pollution Claims Fund should accordingly be made only by those others who ship pollutants into or in Canada in builk as a cargo of a ship and who are not members of the voluntary CRISTAL fund.

If, however, Bill C-2 should be enacted in its present form, CRISTAL will not respond to claims for pollution damage from persons in Canada. This situation stems from the fact that, under Clause IV(b) of the CRISTAL agreement, the compensation available is reduced, inter alia, by the amount to which persons sustaining pollution damage are entitled under applicable law and the fact that Bill C-2 essentially provides for entitlement to unlimited compensation from the shipowner and/or the cargo owner and the Maritime Pollution Claims Fund. Equally, the CRISTAL fund will not be available to reimburse Canadian cargo owners who may incur liabilities under Bill C-2, since the fund is designed to respond only to claims from persons who sustain pollution damage.

Thus, the passage of Bill C-2 in its present form will have the effect of denying to persons in Canada the benefits of the CRISTAL fund and, in effect, means that the full costs of providing compensation for incidents in Canadian jurisdiction will have to be borne by Canadians, rather than being spread across the entire world.

We further suggest that provision might be made for Sections 746 to 760 of Bill C-2 dealing with the Maritime Pollution Claims Fund to be proclaimed law at a different time from that of the other provisions of the Bill. In doing so, the implementation of those sections might be delayed to give the Government an opportunity to see CRISTAL in operation and then determine whether it might be acceptable for Canadian requirements as an interim measure pending ratification of an international convention.

Respectfully submitted,

BP OIL LIMITED — BP PÉTROLES LIMITÉE
Jean Langelier, Q.C.
Vice-President, Secretary and General Counsel

"CRISTAL"

Contract Regarding an Interim Supplement to Tanker Liability for Oil Pollution

Preamble

The Parties to this Contract are various Oil Companies and the Oil Companies Institute For Marine Pollution Compensation Limited, an entity organized and existing under the Laws of Burmuda (hereinafter referred to as the "Institute").

The Parties recognise that marine casualties involving tankers carrying bulk oil cargoes can, on occasion, cause extensive pollution damage on the escape or discharge of oil into the sea. They believe that by increasing the responsibility of tanker owners with respect to pollution damage, the occurrence of such incidents can be reduced, and therefore they strongly favour ratification by the nations of the world of the International Convention on Civil Liability for Oil Pollution Damage adopted at Brussels on November 29, 1969 (hereinafter referred to as "CLC").

The Parties further recognise that in some instances persons sustaining pollution damage may be unable, even after ratification of CLC, (as under current legal regimes), to recover adequate compensation for pollution damage.

The Parties accordingly advocate, in addition to ratification of CLC, the adoption and ratification by the nations of the world of a Convention creating an International Compensation Fund or its equivalent whereby persons who sustain pollution damage for which a tanker owner is liable under CLC would have available supplemental compensation beyond the limits established in CLC. Moreover, the Parties have decided, pending the enactment of such a Convention, to establish by contract a means for providing supplemental compensation for pollution damage beyond the limits of liability presently available underexisting legal regimes, including Tanker Owners Voluntary Agreement Concerning Liability for Oil Pollution ("TOVALOP"), and beyond the limits of liability that will be applicable under CLC, once it enters into force.

In view of the above considerations, the Parties who, as of this 14th day of January, 1971, have executed this Contract and those Oil Companies who later become Parties, have agreed, and do hereby agree, that the Institute will pay such supplemental compensation and that

the Oil Company Parties will assure the availability of funds to permit payment thereof, upon the following terms and conditions:

I. *Definitions.*

For the purpose of this Contract, including the Preamble:

(A)—"Tanker" or "Ship" means any sea-going vessel and any sea-borne craft of any type whatsover, actually carrying oil in bulk as cargo.

(B)—"Person" means any individual or partnership or any public or private body, whether corporate or not, including a State or any of its constituent subdivisions.

(C)—"Owner" means the person or persons registered as the owner of the ship or, in the absence of registration, the person or persons owing the ship. However, in the case of a ship owned by a State and operated by a company which in that State is registered as the ship's operator, "Owner" shall mean such company.

(D)—"Oil" means any persistent oil such as crude oil, fuel oil, heavy diesel oil and lubricating oil whether carried on board a ship as cargo or in the bunkers of a ship.

(E)—"Pollution Damage" means loss or damage caused outside the ship carrying oil by contamination resulting from the escape or discharge of oil from the ship, wherever such escape or discharge may occur, provided that said loss or damage is caused on the territory including the territorial sea, of any nation, and includes the costs of preventive measures and further loss or damage directly resulting from such preventive measures but shall exclude any loss or damage which is remote, or speculative, or which does not result directly from the escape or discharge.

(F)—"Preventive Measures" means any reasonable measures taken by any person after an incident has occurred to prevent or minimise pollution damage.

(G)—"Incident" means any occurrence, or series of occurrences having the same origin, which causes pollution damage.

(H)—"Oil Company" means any person engaged in the production, refining or marketing of oil, or whose affiliates are so engaged.

(I)—"Crude/Fuel Oil Receipts" means crude oil received by an Oil Company at refineries for processing which was transported all or part of the way from point of origin to said refineries by ship, and fuel oil received by it at an installation for storage and terminalling which was transported all or part of the way from point of manufacture to said installation by ship.

(J)—"Contract Year" means any twelve month period commencing upon the Effective Date [as referred to in Vlause III(A) hereof] or any anniversary thereof.

(K)—"Oil Company Party" means (i) any Oil Company which is an initial signatory to this Contract, including an Oil Company which is affiliated with such Company and which, prior to the Effective Date, is designated by such Company as desiring to become a Party, and (ii) any Oil Company which becomes a Party upon acceptance of an application signed by it pursuant to Clause II (B) hereof, including any Oil Company which is affiliated with such Company and which, at the time of such application, is designated by such Company as desiring to become a Party.

II. *General Conditions.*

(A)—Any Oil Company in the world which is willing to be bound by this Contract and to become a shareholder in the Institute and to abide by its By-Laws, Rules and Directives, may become an Oil Company Party to this Contract.

(B)—An Oil Company which is not one of the initial signatories to this Contract or was not designated by an initial signatory as desiring to become a Party, will become an Oil Company Party to this Contract upon acceptance by the Institute of an application in the form attached hereto as "Exhibit A".

(C)—The obligations of an Oil Company under this Contract shall extend solely to the Institute.

III. *Effective Date and Duration.*

(A)—This Contract shall come in effect upon a date selected and announced by the Institute to its shareholders (herein referred to as the "Effective Date") which shall be as early as is practicable after the Institute determines that the total of all Crude/Fuel Oil Receipts, during the calendar year first preceding the calendar year in which such determination is made, of all Oil Companies which are Parties to this Contract as of the time of said determination, constitute at least 50% of the Crude/Fuel Oil Receipts of all Oil Companies during such preceding year.

(B)—(i) Each Oil Company which becomes a Party hereto prior to October 6, 1974 shall be bound by the provisions hereof from the date in becomes a Party until October 6, 1974 and thereafter for successive periods of one year from said October 6, 1974 unless it gives written notice of withdrawal to the Institute prior to April 1, 1974 or prior to April 1 in any such successive yearly period, said withdrawal being effective as of October 6th following the date on which notice has been so given.

(ii) Each Oil Company which becomes a Party hereto after October 6, 1974 shall be bound by the provisions hereof from the date it becomes a Party until October 6 next following the date it becomes a Party and thereafter for successive periods of one year commencing on said October 6, 1974 and each anniversary thereof unless it gives written notice of withdrawal to the Institute prior to April 1 of any such yearly period, said withdrawal being effective as of October 6 following the date upon which notice has been so given.

(C)—Notwithstanding the provisions of Clause III (B) hereof—

(1) This Contract shall terminate (i) at the end of two Contract Years from the Effective Date unless at any time within that two Contract Year period the Institute determines and announces to its shareholders that the total of all Crude/Fuel Oil Receipts, during the calendar year first preceding the calendar year in which the determination is made, of Oil Companies which are Parties to this Contract as of the time of such determination, constitute at least 80% of the total Crude/Fuel Oil Receipts of all Oil

Companies during such preceding calendar year, or (ii) upon the termination of TOVALOP before CLC comes into force, or (iii) at the time a Convention comes into force creating an International Compensation Fund or its equivalent.

(2) This Contract may be terminated, at the discretion of the Institute at the end of five Contract Years from the Effective Date if CLC has not come into force prior to that time.

(D)—Termination of this Contract under this Clause III or otherwise shall not terminate the rights and obligations of any Party already accrued hereunder.

IV. *Functions of the Institute.*

(A)—After the Effective Date, the Institute shall compensate persons for pollution damage sustained by them as the result of an incident when at the time of the incident the oil was owned by an Oil Company Party as follows:

(1) Prior to the time CLC enters into force, whenever (i) the Owner or Bareboat Charterer of the ship from which the oil escaped or was discharged was a Party to TOVALOP at the time of the incident and (ii) the Owner of said ship would have been liable to said persons sustaining pollution damage under the provisions of CLC for the damage if CLC had been in force at the time of the incident and had been applicable to the incident.

(2) After the time CLC comes into force whenever the provisions of CLC apply to the incident, and by reason thereof the Owner of the ship from which the oil escaped or was discharged was, in fact, liable to said persons sustaining pollution damage for said damage.

(B)—The compensation to be paid by the Institute under Clause IV (A) to all persons sustaining pollution damage as a result of said incident (regardless of the number of ships from which oil has escaped or been discharged) shall in no event exceed Thirty Million U.S. Dollars (U.S. $30,000,000.00) less the sum of the following:

(1) The Owner's or Bareboat Charterer's maximum liability for said pollution damage under TOVALOP, *plus*

(2) The amount of expenditures that the Owner or Bareboat Charterer was entitled to make for "Removal of Oil" (as defined in TOVALOP) and to receive reimbursement for as provided in TOVALOP, *plus*

(3) The maximum liability of Owner or Bareboat Charterer with respect to such damage under applicable law, statutes, regulations or conventions, *plus*

(4) The maximum amount to which such persons sustaining pollution damage were entitled from any other person or from the ship or from any other vessel under applicable law, statutes, regulations or conventions providing for compensation for all or part of said damage.

(C)—If the total pollution damage resulting from an incident exceeds the net amount referred to in Clause IV (B), then said net amount shall be prorated by the Institute among the persons sustaining said damage.

(D)—Notwithstanding the foregoing, if a person sustaining pollution damage fails to exercise due diligence to recover compensation for such damage from (i) the Owner or Bareboat Charterer of the ship from which the escape or discharge of oil occurred, or (ii) any other person, or (iii) the ship or any other vessel, then to the extent that said Owner, Bareboat Charterer, person, ship or other vessel are liable for part or all of said damage, the Institute shall not compensate said person sustaining pollution damage under this Clause IV.

(E)—The net amount provided for in Clause IV(B) shall be reduced by any amounts paid, or agreed to be paid, by the Institute in settlement of claims made under this Contract.

V. *The Fund.*

The Institute, in order to assure its financial capability to pay compensation under Clause IV hereof, shall maintain and administer a Fund created as follows:

(1) The Fund shall initially be consituted in the amount of Five Million U. S. Dollars (U. S. $5,000,000.00) (hereinafter referred to as the "Initial Call").

(2) As soon as practicable after the Effective Date the Institute shall assess each Oil Company Party to this Contract as of the Effective Date and each such Party shall pay to the Institute that portion of the Initial Call calculated by dividing its total Crude/Fuel Oil Receipts for the calendar year immediately preceding the Effective Date by the total Crude/Fuel Oil Receipts during such preceding calendar year of all Oil Companies who were Parties to this Contract at the Effective Date and by multiplying this percentage by said Initial Call.

(3) Any Oil Company becoming a Party to this Contract subsequent to the Effective Date shall be assessed by the Institute and shall pay to the Institute that portion of the Initial Call calculated in the same manner as under Clause V(2). At such time appropriate adjustment shall be made in the portion of the Initial Call of all Oil Companies then Parties to this Contract and, at the discretion of the Institute, such Oil Companies shall receive an appropriate refund or a credit against future assessments.

(4) The Institute shall, from time to time during each Contract Year estimate the amount reasonably required by it to pay compensation in accordance with Clause IV and shall determine what portion of such amount ("such amount" being hereinafter referred to as "Periodic Call"), shall be in cash and what portion shall be in other forms.

(5) The Institute shall, at such times as are appropriate during each Contract Year, assess each Oil Company Party and each such Party shall pay to the Institute that portion of any Periodic Call made during said Contract Year calculated by dividing its total Crude/Fuel Oil Receipts for the calendar year first preceding the commencement of said Contract Year by the total of the Crude/Fuel Oil Receipts during such preceding calendar year of all Oil Companies who were Parties to this Contract as the date of such assessment and by multiplying this percentage by the amount of said Periodic Call, provided

however, that notwithstanding the foregoing, (i) each such Oil Company Party (whether or not it had any Crude/Fuel Oil Receipts in such preceding calendar year) shall pay a minimum charge determined by the Institute for each Contract Year, which minimum charge may be offset against any portions of an assessment otherwise payable hereunder, and (ii) no Oil Company Party shall be liable for that portion of an assessment which relates to payment of compensation by the Institute in excess of Five Hundred Thousand U.S. Dollars (U. S. $500,000.00) with respect to any one incident which occurred prior to the date upon which it becomes a Party to this Contract.

(6) Except as provided in Clause V(3) hereof, in the case of any Oil Company which becomes a Party hereto during a Contract Year after the commencement thereof, the Institute shall assess such Company in the manner provided in Clause V(5) hereof, but only in respect of that portion of said Contract Year during which it has been an Oil Company Party to this Contract.

(7) Upon termination of this Contract, any amounts remaining in the Fund shall be equitably distributed among the Oil Companies then Parties hereto.

VI. *Notice of Claim.*

The Institute shall not entertain any claim by any person allegedly sustaining pollution damage unless such person gives notice of claim to the Institute within one year of the date of the alleged incident giving rise to such a claim.

VII. *Rules and Directives.*

The Institute shall have the right to make rules and directives from time to time with respect to the interpretation and administration of this Contract.

VIII. *Amendment.*

This Contract may be amended by Special Resolution adopted at an Extraordinary General Meeting of the Institute upon a vote in which at least 75 per cent of the votes cast are in favour of said Resolution. However, and notwithstanding the provisions of Clause III(B), an Oil Company Party which votes against said Resolution shall have the option to withdraw herefrom on giving sixty days written notice to the Institute without, however, affecting its rights and obligations accrued at the time of withdrawal.

IX. *Law Governing.*

(A) This Contract shall be construed and shall take effect in accordance with the laws of England and the Courts of England shall have exclusive jurisdiction over any matter arising therefrom.

(B) This Contract shall not be construed as creating a trust.

(C) Anything to the contrary herein notwithstanding, a Party hereto shall not be required to incur any obligation or take any action which would violate any laws or government regulations which apply to it or, in the event its stock or shares are owned by another person, which would violate any laws or government regulations which apply to said person.

IN WITNESS WHEREOF, the Parties have entered into this Contract as of the date indicated in the Preamble hereto, or upon the date on which their application is accepted by the Institute as provided in Clause II(B).

AGIP SPA
By: Giancarlo Gini, Attorney-in-Fact

AMOCO TRADING INTERNATIONAL LIMITED
By Bruce K. Stephen, Attorney-in-Fact

BRITISH PETROLEUM COMPANY LIMITED
By: P. A. Medcraft, Attorney-in-Fact

CITIES SERVICE TANKERS CORPORATION
By: G. H. Blohm, President

COMPAGNIE FRANÇAISE DES PÉTROLES
By: B. A. Dubais, Attorney-in-Fact

ELF UNION
By: B. A. Dubais, Attorney-in-Fact

ESSO PETROLEUM COMPANY, LIMITED
By: R. E. Howe, Attorney-in-Fact

GULF OIL CORPORATION
By: W. C. Brodhead, Vice-President

ASIA OIL COMPANY, LIMITED
DAIKYO OIL COMPANY, LIMITED
FUJI KOSAN COMPANY, LIMITED
FUJI OIL COMPANY, LIMITED
GENERAL SEIKIYU SEISEI K.K.
IDEMITSU KOSAN COMPANY LIMITED
KASHIMA OIL COMPANY LIMITED
KOA OIL COMPANY LIMITED
KYOKUTO PETROLEUM INDUSTRIES LIMITED
KYUSHU OIL COMPANY LIMITED
MARUZEN OIL COMPANY LIMITED
MITSUBISHI OIL COMPANY LIMITED
MITSUBISHI SHOJI KAISHA LIMITED
NIPPON MINING COMPANY LIMITED
NIPPON OIL COMPANY LIMITED
NIPPON PETROLEUM REFINING COMPANY LIMITED
SEIBU SEKIYU K.K.
SHELL SEKIYU K.K.
SHOWA OIL COMPANY LIMITED
TAIYO OIL COMPANY LIMITED
TOA NENRYO KGYO K.K.
TOA OIL COMPANY LIMITED
TOHO OIL COMPANY LIMITED
By: Masashi Kato, Attorney-in-Fact

MOBIL OIL CORPORATION
By: E. S. Checket, Vice President

PETROFINA S.A.
By John Mackenzie, Attorney-in-Fact

SHELL INTERNATIONAL PETROLEUM COMPANY LIMITED
By: A. S. M. Hetherington, Duly Authorized Attorney

SOCIEDADE PORTEGUESO DE NAVIOS TANQUES LIMITADA
By: R. C. Henriques, President
J. G. Leite, Director

STANDARD OIL COMPANY OF CALIFORNIA
By: L. C. Ford, Attorney-in-Fact
SUN OIL COMPANY
By W. G. S., Attorney-in-Fact
TEDACO INC.
By: John I. Mingay, Senior Vice President
OIL COMPANIES INSTITUTE FOR MARINE POLLUTION COMPENSATION LIMITED

VICE PRESIDENT and DIRECTOR

"EXHIBIT A"

TO: Oil Companies Institute for Marine Pollution Compensation Limited

The undersigned, and such of its affiliates as it may designate in an attachment hereto, hereby applies (apply) to become an Oil Company Party (Parties) to the Contract Regarding an Interim Supplement to Tanker Liability for Oil Pollution ("CRISTAL"), dated as of 14 January, 1971, and agrees (agree), if this application is accepted, to fulfil all the obligations of an Oil Company Party, to become a shareholder in the Oil Companies Institute For Marine Pollution Compensation Limited, and to abide by its By-Laws, Rules and Directives.

.....

Accepted upon this

.....day of.....

Oil Companies Institute for Marine Pollution Compensation Limited

APPENDIX "D"

SUBMISSION OF
GULF OIL CANADA LIMITED
TO THE STANDING SENATE COMMITTEE
ON TRANSPORT AND COMMUNICATIONS

Gulf Oil Canada Limited is a major integrated oil company carrying on business in all provinces in Canada, the Yukon and the Northwest Territories.

During the year 1970, the volume of crude and refined products moved via ocean-going vessels from points outside Canada into the country totalled 23,616,227 barrels. In the same period, coastwise movements within Canada of crude and refined petroleum products totalled 12,914,-533 barrels.

Gulf Canada owns no ocean-going vessels and its ownership of domestic vessels is limited to one ship of 15,425 deadweight tons.

The Company is the owner of all cargoes moved within Canadian waters. With limited exceptions, Gulf Canada's offshore crude and refined products purchase contracts are f.o.b. port of loading. Thus, title to and risk in the cargo passes to the Company at that point.

Under these circumstances, it will be obvious that Gulf Canada's prime concern with Bill C-2 relates to those provisions dealing with cargo owners.

This Bill proposes two concepts of legal liability, irrespective of fault, affecting the cargo owner which are completely new:

1. a primary liability under which a cargo owner has the same liability as a shipowner to victims of pollution on a joint and several basis;

2. A secondary liability under which cargo owners would establish and maintain through direct contribution a Maritime Pollution Claims Fund. The fund would be used to provide compensation to the extent that it is not recoverable from the shipowner or cargo owner under the primary liability.

These concepts are founded on the premise that all persons who suffer damage, costs and expenses as a result of marine pollution must receive full compensation. While Gulf Canada does not disagree with the objective, it does not believe that the imposition of Primary Cargo Liability is a proper means of attaining it for the following reasons:

1. The owner of a cargo does not have any control over the cargo or over the ship from the time a voyage commences until it ends;

2. Imposition of Primary Cargo Liability will not create, as has been suggested, an incentive for charterers to select safer ships;

3. The shipowner, in fact, will pay for all damages for which he is responsible up to the statutory limit of his liability. The shipowner must be insured for this amount under Section 745 of the Bill and by virtue of international shipping practice;

4. It is manifestly unfair and inequitable to bring home to the cargo owner, who is without any control or knowledge, the unlimited liability arising from the "fault or privity" of the owner as is proposed in Section 744(4)(d). Furthermore, there is no specific right of recourse given to a cargo owner who has made or has been compelled to make a payment under Section 743 against the shipowner.

With respect to the secondary liability imposed upon oil company cargo owners by way of contributions to the Maritime Pollution Claims Fund, Gulf Canada strongly contends that the Fund should be in substitution for, and not added to, the proposed Primary Cargo Liability. For the reasons mentioned above, the objectives to be attained would in no way be jeopardized by so doing. With respect to the Fund itself as proposed by the Bill, the following points are caused for concern:

1. The Fund may be drawn upon to compensate for damages caused by any pollutant. The fund contributors as the Bill presently stands will be limited to owners of oil cargoes. This unjustly discriminates against members of the oil industry. The Bill should be amended to provide that the Fund be not available for disasters caused by pollutants other than oil until such time as the owners of cargoes other than oil are required to contribute to the Fund.

2. The exceptions to the absolute nature of the liability of shipowners should apply to the liability on the part of the Fund.

3. The proposed Bill does not clearly define an inland voyage. This is particularly important with respect to domestic movements of refined products which involve multiple stopovers at terminal points and, in some cases, movement between terminals.

4. It is essential that the Bill specify a maximum amount for the Fund. Provision may be made for an increase or decrease in such amount based on experience over a stated period of time. To this date, experience in Canada would indicate a maximum of $10,000,000 would be sufficient.

It is regrettable that the liability provisions contained in Bill C-2 have not been brought into line with the Brussels Liability Convention, i.e., the Brussels International Convention on Civil Liability for Oil Pollution drafted at the IMCO-Brussels International Legal Conference on Pollution of the Sea by Oil held in November, 1970. This is particularly so due to the progress being made in the establishment of an International Compensation Fund for Oil Pollution Damage. This will be a cargo-supported, permanent fund to supplement shipowner liability for oil pollution damage to a maximum of $30,000,000 per accident. Compensation will only be payable to pollution victims in countries which have ratified the Convention mentioned above. Canadians cannot qualify if Bill C-2 exists in its proposed form.

It should also be noted that the Fund created by Bill C-2 completely ignores the fact that, effective April 1, 1971, a group of international oil companies will create

by voluntary agreement a fund to provide compensation to pollution claimants of up to $30,000,000 per incident over and above the liability of tanker owners. This is known as the CRISTAL agreement and will be supplementary to TOVALOP.

The unilateral enactment of Bill C-2 by the Government of Canada under these circumstances would appear, with due respect, to be hasty and unnecessary.

Respectfully submitted,

GULF OIL CANADA LIMITED

APPENDIX "E"

CANADIAN CHAMBER OF SHIPPING

OIL POLLUTION
NATIONAL AND INTERNATIONAL LEGISLATION

Shipping is an international business involving the carriage of cargo and passengers between more than 100 separate sovereign states. A single voyage from one port to the next may involve a ship passing through the waters of many coastal states.

There is no supra-national body which can legislate for all the waters of the world any more than for the air above them or for outer space. Thus the only two possible ways of creating any laws for shipping are—

(i) separate legislation by each separate coastal state;

(ii) international agreements freely arrived at by governments and freely accepted by them.

Where national legislation affects shipping only incidentally, e.g. the ordinary criminal law, it is inevitable that there will be some variations between different local laws. Where, however, legislation is peculiar to shipping and affects foreign as well as national flag vessels it should, as far as possible, be on lines internationally agreed. There are three reasons:—

(a) The practical consequences of a new Bill are not always fully appreciated by its authors. Examination by world experts at IMCO can test the soundness of new ideas proposals; those which receive their endorsement will normally be readily accepted by both governments and shipowners. As a consequence, the required measures may be widely introduced even before the approprate convention has come into force.

(b) However reasonable individual national legislation may be, even minor differences between the laws of states can cause major practical difficulties for world shipping and consequently world trade.

(c) Even if national laws are identical, there may, in the absence of any international agreement, be serious problems owing to the fact that a shipowner instead of satisfying one state (the flag-state) must satisfy separately and individually every coastal state to which his ships may go. For example, shipowners have said that they can live with the compulsory insurance provisions of the International Convention on Civil Liability for Oil Pollution Damage; they could not live with a situation where every coastal state had to be separately satisfied of a ship's financial responsibility—even if the requirements under national legislation were less stringent than those in the Convention.

For these three reasons shipowners' constant theme is that shipping is an international business and all problems, except the most local, should be resolved internationally. If a country "goes it alone" the result it desires may not be achieved; even if it is achieved it may be only at a disproportionate cost to its own economy. For example, if a country requires vessels to be designed and equipped in a way which no other country demands, fewer ships will be able to serve it, and those that do will have greater expenses to recover. Extra costs, whether of equipment, running expenses or liability are likely to be passed on through freight rates to the importer and exporter. Where those costs arise from action in one country only, the resultant burden on that country's trade is inevitably much higher than where the cost arises from any international agreement. It is occasionally suggested that the plea for international agreement is an attempt to delay unpleasant legislation. It is not; shipowners have a long record of anticipating legal requirements and acting without delay on items on which there is international agreement. For example, the load-on-top system was widely introduced well ahead of the necessary amendments to the Oil Pollution Convention 1954, and shipowners have complied with IMCO's traffic separation schemes without waiting for their formal adoption by the IMCO Assembly. In the field of liability for oil pollution damage, tanker companies representing over 80 per cent of the world's tanker tonnage have, through TOVALOP, voluntarily accepted a responsibility over and above their legal liability.

Against this background shipowners feel justified in calling on governments to stick firmly to international solutions to the problems of oil pollution. This means for example that national legislation or liability should be based on the International Convention on Civil Liability for Oil Pollution Damage and in due course, on the proposed Convention on an International Compensation Fund.

Meanwhile, full advantage can be taken of the voluntary schemes set up by the industry.

Other measures against oil pollution have been agreed internationally and shipowners welcome national implementation of the International Convention on Oil Pollution 1954/69—when the shore reception facilities envisaged in the Convention have been provided—and of the International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties.

10-2-1971.

APPENDIX "F"

Submission by the International Chamber of Shipping in connection with Bill C-2, an Act to amend the Canada Shipping Act

Representatives of the International Chamber of Shipping (ICS) were given the privilege of testifying before the House of Commons Special Committee on Environmental Pollution and their testimony appears in Issue No. 5 of the Committee's proceedings. A subsequent written submission appears in Issue No. 6.

Since then, the Bill has been amended in the House of Commons and there have been certain relevant developments elsewhere. Accordingly, it may be useful to the Senate for ICS to make a further submission, a submission which is not a mere repeat of the previous one, but which like it, concentrates on specific constructive proposals. These proposals should in no way weaken the effect of the Bill, but should reduce the harm which it might otherwise do to Canada's international trade.

Section 738 deals with the removal and destruction of ships in distress. The representatives of ICS suggested that the powers given under this Section might be widened to embrace other forms of emergency action; they added at the same time that the powers should be balanced by the safeguards of the relevant international convention* adopted without a dissentient vote at the international Legal Conference on Marine Pollution Damage. Since this suggestion was made it has been shown to be a practical proposition; the Oil in Navigable Waters Bill now before the United Kingdom Parliament illustrates how a government can take sufficiently wide powers to act in an emergency but do so in a way which is likely to be acceptable to other nations.

Section 739. The original submission in respect of this Section remains valid. It read in part:

> "*Section 739* enables the Government to issue regulations on almost every aspect of operations. It applies not only to ships coming to Canadian ports, but also to those which are engaged in Innocent Passage to the ports of other states. It is this latter provision which could lead to other governments taking similar action and subject vessels carrying Canada's cargoes to the regime of many other coastal states. It would seem to shipowners a major improvement if this section or even the whole Bill were limited to ships calling at Canadian ports. This alteration would make little practical difference to the Bill's effectiveness but would remove the very serious risk of starting a chain reaction which could seriously damage Canada's trade.
>
> Insofar as the section applies to ships calling at Canada, the effect will depend on whether the regulations correspond with international agreements, go beyond them, or conflict with them. It is believed that there is a genuine wish to use all effective international agreements and it might be helpful if the wording were to make this clear, for example, by stating that 'without limiting the generality of these powers' the Governor in Council should be empowered to issue regulations implementing any international convention dealing with the subjects listed.
>
> In any case, shipowners would hope that the opening words of the section would make it clear that before regulations are finally issued, there should be full and adequate consultation with all interested parties. In addition, words could be added to incorporate all the safeguards constitutionally available in cases where a power is given to issue far-reaching regulations."

It should perhaps have been made clear that a vessel seeking refuge in a Canadian port should, in accordance with normal custom, be treated as a vessel engaged in innocent passage.

Sections 740 and 741 deal with the Pollution Prevention Officer.

Shipowners welcome the new *Section 741 (2)* providing compensation to vessels required to assist in clean-up. This change does, however, reinforce shipowners' belief that a power having such major consequences, should be in the hands not of a subordinate official, but of the Minister himself.

Other parts of *Section 741* give the Pollution Prevention Officer authority to issue navigational orders to individual ships, presumably in order to reduce accidents involving pollution. The problem of preventing accidents is a worldwide one and arises in an acute form in such international waterways as the Malacca Straits and the Dover Strait. Accordingly, governments in IMCO have for long been giving thought to any measures that would be useful. Yet at no time has there been any significant support for this or any other form of positive traffic control by third parties. Presumably this is because of the belief—which the shipping industry shares—that it would create serious legal and practical difficulties and might increase accidents rather than reduce them. It therefore seems to ICS both undesirable and dangerous for Bill C.2 to give such powers to officials who may be completely unqualified.

Sections 743 and 744 deal with liability. The amendments that have been made to the Bill substantially meet the points made by the ICS representatives. They would, however, hope that the Senate would take expert advice on this subject from the representatives of the P and I Clubs.

Section 757 now makes it clear that the responsibility for payment to the Fund rests on the cargo owner and not on the shipowner. However, Sub-Section (2) dealing with the point in time by which payment must be made has not been altered. This means that the ship may still be involved in expense not of paying, but of delay because someone else has not paid. This problem of collection has been thoroughly debated in the current IMCO discussions on the proposed International Compensation Fund; it is now clear that nearly all member-governments there accept that contributions can and should be collected without delaying the discharge or departure of the ship. Accordingly ICS would urge the need for some

* The International Convention on Intervention on the High Seas in Cases of Oil Pollution Casualties

amendment—which could be considered consequential to the amendment already made—that would avoid the shipowner having to provide in the freight rate for the possibility of delay. Such an amendment would remove a provision that is contrary to natural justice, and ensure that the consequences for non-payment were borne by the defaulter and not by an innocent third-party.

Sections 769 and 770 dealing with the seizure of vessels have been slightly amended. However, they still give the power of seizure to the Minister and not to the courts. In addition, a decision of the court that a ship shall be released is subject to the consent of the Minister. A tanker may cost several million pounds and to deprive the owner of its use without due process of law amounts to punishment without trial. Shipowners are therefore firmly of the belief that these sections should be deleted entirely. It is most earnestly suggested by ICS that, at the very least, amendments are made which will ensure that seizure can always be challenged in the courts and that the Executive is not able to thwart a court decision.

Section 4 of the Bill now provides that the Act shall come into force on a day to be fixed by proclamation but makes special provisions for Section 745 of the Canada Shipping Act. In view of the rapid developments in this field, it is urged that this provision should be sufficiently flexible to allow other sections to be brought in at different times and, if necessary at separate times for different classes of vessels.

General

The ICS representatives who appeared before the House of Commons Special Committee recounted what shipowners had done and are doing to minimise pollution. They stressed also the importance of international agreement in dealing with the international problem of pollution. Examination in IMCO's multi-national forum has proved the best test yet of the soundness of any proposal.

Nevertheless, it is not sufficient that national shipping laws should be sound; for the sake of international trade they should also be uniform. However reasonable any individual national law may be, even minor differences from what applies elsewhere may cause major practical difficulties for shipping engaged in worldwide service. The prudent shipowner, in considering the best employment for his vessel, is bound to take special account of national legislation which involves requirements or obligations additional to or different from those with which he is faced in world trade generally. Bill C.2 has several such features which do not apply elsewhere—individual regulations on structural and operational matters (Section 739), sweeping powers given to subordinate officials (Section 741), and arbitrary seizure (Sections 769-770). It follows that an owner considering committing his vessel to Canada will have to provide in the rates he charges for the cost of fitting such special equipment and exposing his vessel to such special hazards—that is, if he does not decide that because of these difficulties it is better to employ his vessel elsewhere. All this leads to increases in the costs of exporting and importing.

There is recent evidence that unilateral anti-pollution laws in certain other parts of the world have already begun to have such an effect. In Canada itself, as officials of the Department of Transport are aware, there might have been similar consequences had the proposed Arctic Shipping Pollution Prevention Regulations come into effect this season. While ICS cannot say for certain what features of any Bill will in practice cause most difficulty, the present submission indicates certain features of C.2 which threaten to damage Canadian trade in this way.

Representatives of ICS have already made a special visit to Canada to discuss this Bill with the House of Commons Special Committee and with officials of the Department of Transport and, insofar as it is possible in the time available, ICS will be very willing to do all that it can to provide any further information or assistance that may be required.

12th March, 1971.

Published under authority of the Senate by the Queen's Printer for Canada

Available from Information Canada, Ottawa, Canada.

CA1 YC 19
72

THIRD SESSION—TWENTY-EIGHTH PARLIAMENT

1970-71

THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING SENATE COMMITTEE ON

TRANSPORT AND COMMUNICATIONS

The Honourable HÉDARD J. ROBICHAUD, *Acting Chairman*

No. 4

WEDNESDAY, MARCH 24, 1971

LIBRARY
APR 30 1971
UNIVERSITY OF VICTORIA

Third and final Proceedings on Bill C-2,

intituled:

"An Act to amend the Canada Shipping Act"

REPORT OF THE COMMITTEE

(For list of Witnesses and Appendix—see Minutes of Proceedings)

23618—1

THE STANDING SENATE COMMITTEE ON TRANSPORT AND COMMUNICATIONS

The Honourable J. Campbell Haig, *Chairman*

The Honourable Senators:

Aseltine	Macdonald (*Cape Breton*)
Blois	*Martin
Bourget	McElman
Burchilll	McGrand
Connolly (*Halifax-North*)	Michaud
Denis	Molson
*Flynn	Nichol
Fournier (*Madawaska-Restigouche*)	O'Leary
Haig	Pearson
Hayden	Petten
Hollett	Rattenbury
Isnor	Robichaud
Kinley	Smith
Kinnear	Sparrow
Langlois	Welch

Ex officio members: Flynn and Martin

(Quorum 7)

Order of Reference

Extract from the Minutes of the Proceedings of the Senate, March 10th 1971.

"Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Petten, seconded by the Honourable Senator Eudes, for the second reading of the Bill C-2, intituled: "An Act to amend the Canada Shipping Act".

After debate, and—
The question being put on the motion, it was—
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Petten moved, seconded by the Honourable Senator Kickham, that the Bill be referred to the Standing Senate Committee on Transport and Communications.

The question being put on the motion, it was—
Resolved in the affirmative."

ROBERT FORTIER
Clerk of the Senate

Minutes of Proceedings

Wednesday, March 24th, 1971.
(4)

Pursuant to adjournment and notice the Standing Senate Committee on Transport and Communications met this day at 10.00 a.m. to further consider the Bill C-2, intituled: "An Act to amend the Canada Shipping Act".

Present: The Honourable Senators Bourget, Burchill, Hollett, Kinley, Kinnear, McElman, Petten, Rattenbury, Robichaud and Smith—(10).

On Motion of the Honourable Senator Bourget, the Honourable Senator Robichaud was elected Acting Chairman.

Present but not of the Committee: The Honourable Senators Hays, McNamara and Thompson. (3)

In attendance: Mr. Pierre Godbout, Assistant Law Clerk and Parliamentary Counsel.

On Motion of the Honourable Senator McElman, it was *Resolved* to print 800 copies in English and 300 copies in French of these Proceedings.

The folloiwng witnesses were heard:

DEPARTMENT OF TRANSPORT:

Mr. R. R. Macgillivray, Director, Marine Regulations Branch.

BP OIL LIMITED:

Mr. Jean Langelier, Q.C.,

LONDON GROUP OF PROTECTION AND INDEMNITY ASSOCIATIONS:

Mr. Jean Brisset, Q.C., Advocate.

PETROLEUM ASSOCIATION FOR CONSERVATION OF THE ENVIRONMENT (PACE)—IMPERIAL OIL.

Mr. J. L. Lewtas, Q.C., Counsel.

It was agreed to print as an Appendix to these Proceedings 2 Telex communications addressed to BP OIL LIMITED from OIL COMPANIES INTERNATIONAL MARINE FORUM.

It was Resolved to report the said Bill without amendment.

At 12.10 p.m., the Committee adjourned to the call of the Chairman.

ATTEST:

Aline Pritchard
Clerk of the Committee.

Report of the Committee

Wednesday, March 24, 1971.

The Standing Senate Committee on Transport and Communications, to which was referred Bill C-2, intituled: "An Act to amend the Canada Shipping Act", has in obedience to the order of reference of March 10, 1971, examined the said Bill and now reports the same without amendment.

Respectfully submitted.

H. J. Robichaud,
Acting Chairman.

23618—2

The Standing Senate Committee on Transport and Communications

Evidence

Ottawa, Wednesday, March 24, 1971

The Standing Senate Committee on Transport and Communications, to which was referred Bill C-2, to amend the Canada Shipping Act, met this day at 10 a.m. to give further consideration to the bill.

Senator Hédard Robichaud (*Acting Chairman*) in the Chair.

The Acting Chairman: Honourable senators, this morning we again have before us Bill C-2, to amend the Canada Shipping Act. As you may have noticed, most of the witnesses who appeared before the committee at the last two meetings, and Mr. Macgillivray representing the department, are here this morning.

I suggest that we first have a statement by Mr. Macgillivray, following which he will be prepared to answer any questions by members of the committee. I understand that some of the witnesses may have very brief statements to make, adding to the representations they made at the last two meetings. We will proceed to hear Mr. Macgillivray's statement. I understand he has had a chance to discuss the bill further with the minister and his department.

Mr. R. R. Macgillivray, Director, Marine Regulations Branch, Department of Transport: Honourable senators, at the last meeting I briefly reviewed the list of changes that I understood were being proposed by the witnesses, and I undertook to take them up with the minister. I also undertook to get some legal opinions from the Department of Justice. I have done this, and as a general statement the minister would like to point out to the committee the desirability of passing the bill without change, so as to avoid having to go back to the House of Commons, where they have a heavy calendar and the possibility would be that the bill would be delayed for a considerable period of time.

In the meantime, super-tankers are coming into the Bay of Fundy now; they will be coming into Chedabucto Bay within a few months, and will also be coming into Cherry Point on the west coast very close to our waters. There are many features of this bill that everyone has acknowledged to be desirable, and that the minister is anxious to see brought into force as soon as possible.

At the same time, the minister has recognized that some of the amendments the witnesses suggest should be made to the bill by this committee are acceptable in principle, and he is prepared to come back to Parliament before the end of the year with further amendments to the Canada Shipping Act to take care of some of these points. He does not accept all of the points that were raised before this committee, but he does recognize that some of the amendments could be made without defeating the objects of the bill. In order to get it into statutory form as soon as possible, he hopes that this committee will not recommend any amendments.

On one point which was made by one of the witnesses last week, about the missing word in the French text of section 744, I have traced it down and it is definitely a printer's error, a typographical error in the printing of the bill. As it was reported by the committee of the Commons, the word "et" appeared at the end of line 36 on page 13, making it quite clear that the printers had merely missed the next line of type where the word "irresistible"—

The Acting Chairman: The word "irresistible" was omitted in the French translation.

Mr. Macgillivray: So it is quite clearly a typographical error and it does not need any amendment moved by this committee.

The Acting Chairman: Mr. Macgillivray, will you also say a few words regarding the international situation in waters adjacent to Canadian and United States coasts? I think the minister has commented also on what could be done or might be done in this regard.

Senator Bourget: Are you talking about oil?

The Acting Chairman: This is the point regarding international agreements.

Mr. Macgillivray: It is easy to recognize that the bill presents problems in this area, that there should be if possible an agreement with the United States whereby, when an oil spill occurs in or near contiguous waters of the two nations and damage is done on both sides of the border, there must be some way of recognizing that claims will be brought in the courts of both countries, and that it is desirable that the one limitation amount be established and that the shipowner not be subject to double liability if damages exceed the limitation amount.

This is recognized and we do intend, as soon as opportunity permits—which will be when this bill is not occupying our time—to have talks with the Americans, not only about these liability provisions but about other related subjects we have for discussion. I am thinking particularly of a proposal we have for traffic control in the Strait of Juan de Fuca—at least traffic routing, which pretty well demands the agreement of both countries. And this may lead to traffic control in that area or part

23618—2½

of it. It may also lead to a joint pilotage effort because if we accept a traffic separation scheme and compulsory pilotage in the Juan de Fuca Strait it would be necessary for United States pilots to be licensed to pilot on the Canadian side and for Canadian pilots to be licensed to pilot on the United States side.

These are subjects we are proposing for talks with the United States authorities in the near future. In addition, we would be talking about the proof of financial responsibility provisions, which are presenting problems now, when people must produce proof both in the United States and in Canada.

Senator Bourget: May I ask Mr. Macgillivray if this kind of international agreement between the two countries could be made and put into force without putting it into the bill?

Mr. Macgillivray: No, this is one of the things on which we would have to come back to Parliament for amendment.

Senator Bourget: Are you going to spell out now what the amendment might be in the fall?

Mr. Macgillivray: I think it would be preferable to do this as we go through the bill clause by clause, and when we come to the points which have been raised I could express the minister's view as of now.

The Acting Chairman: Are there any further questions?

Before we proceed with the bill, I understand that Mr. Langelier has a few remarks he wishes to add to his previous submission.

Mr. Jean Langelier, Q.C., BP Oil Limited: Thank you, Mr. Chairman and honourable senators, for allowing me to clarify some of the remarks which I made on March 17, at least more specifically on the international fund called CRISTAL.

Honourable senators will recall that at that time I unequivocally indicated that if Bill C-2 were to be passed in the form in which it presently is, the CRISTAL fund would not respond.

This view was questioned by Mr. Macgillivray at page 3:30 of the report and at page 3:32 by Senator Flynn, who said: "I question whether this is so".

Since appearing before your committee, I have endeavoured to obtain confirmation as to the accuracy of the opinion and of the statement which I gave you. I have now received the following Telexes which are being confirmed in writing.

The first Telex is signed by Mr. P. A. Medcraft, Chairman, Oil Companies International Marine Forum, which is the working group which prepared the agreement on the CRISTAL-OCIMF—that is short for the Oil Companies International Marine Fund. OCIMF met in London on Monday morning, a few days ago. This is the Telex:

> Question of response of CRISTAL to claims if Bill C-2 becomes law in present from has been closely considered by OCIMF working group today (stop) B.A. Dubais, Chairman of the Board of the Oil Companies Institute for Marine Pollution Compensation Limited advises as follows:
>
> Quote—you will appreciate that CRISTAL is a voluntary agreement and its applicability and its interpretation will be decided in any case by the institute (stop) However its basic objective is to supplement tanker liability (stop) If some other source of compensation created by law supplements that tanker liability there obviously is no area for CRISTAL to operate (stop) Our previous advice that no payment would be made by CRISTAL is confirmed and would refer you particularly to Article IV(b) (stop) This advice is given because Bill C-2 provides that claimants have right of recovery from shipowner and cargo owner under section 743 and to the extent that claims are not satisfied claimants are entitled to recover from Maritime Claims Fund under section 753 without limit (stop) Bill C-2 having given claimants such legal rights CRISTAL by its terms will not respond (stop) unquote.

A further signal or Telex came in respect of section 744(4)(d) which provides for unlimited liability. The text is as follows:

> For J. Langelier from P. A. Medcraft Your Telex 22nd recieved (stop) We confirm that if liability of either shipowner or cargo owner is unlimited under section 744(4)(d) due to actual fault or privity then no payment will be made by CRISTAL (stop) Letter follows containing text of statement given in previous Telex and confirming this Telex.

There is a point there which it is impossible to fathom in so far as we are concerned and that is that as far back as early last December, when PACE submitted a brief to the Committee of the House of Commons and in continuous correspondence with the committee and the Minister of Transport, both and all were kept fully advised of all developments in respect of CRISTAL. But nowhere, either at committee deliberations, to our knowledge, and before third reading, or at any time in the House of Commons, was mention ever made. But why was it not?

We think that the Canadian people are entitled to know, especially as they will be deprived of the benefits of CRISTAL—which are presently set at $30 million per accident—and this at no cost to Canadian taxpayers or consumers.

The Canadian fund at best has been estimated to bring in about $3 million in its first year of operation.

Secondly, we repeat in passing that a cargo owner should not be required to produce a certificate of financial responsibility up to $14 million, nor should he be required to contribute to the Maritime Claims Pollution Fund.

Thirdly, Mr. Macgillivray took exception at page 3:29 to our proposed amendment, the addition of the words "or partially" immediately following the word "wholly" in section 744(1)(b). I would think that there may have been a misunderstanding on that point. We are not, Mr. Chairman, questioning "the idea of the absolute liability" of which Mr. Macgillivray has spoken to us. All we are doing is providing for a defence to the cargo owner and to the shipper in the event of common fault.

Honourable senators, I thank you for allowing me the privilege of addressing you today.

The Acting Chairman: Thank you. Are there any questions?

Senator Hollett: I take it that unless the Government conforms to the request or the demand you have read there, we will not benefit by the oils from this company you represent?

Mr. Langelier: No, honourable senators. In fact, all I am saying is that if Canada decides to pass Bill C-2 in its present form, CRISTAL, the voluntary oil company sponsored agreement, will not pay any claims made by Canadians.

The Acting Chairman: Have you any comments, Mr. Macgillivray, on the point raised by Mr. Langelier?

Mr. Macgillivray: On the criticism of us for not having mentioned CRISTAL, I would have to review the proceedings of the other committee. I thought it was clear that we were aware of the CRISTAL plan, though to the best of my recollection we did not have the details of the plan until after the bill was reported by the committee of the other place. We have now the full details of the plan and, of course, we are studying it.

There are three bars mentioned in the Telexes to recovery from the fund, from CRISTAL, by Canadians. One is if the cargo owner is liable, and in its present form you will see that this is a provision that is to be brought into force by regulation. The bill, if it passes in its present form, imposes absolute liability on the shipowner. It will be extended to cover the cargo owner—as we have explained and as I believe the minister explained in the house—when we are able to work out a scheme as to exactly how this regime is to apply to the cargo owner.

The second point was that we would have our own fund and, of course, if we should have a $30 million incident after the bill comes into force and when our fund is only standing at, perhaps, $1 million, from my reading of the CRISTAL agreement we would be entitled to the amount after we had exhausted our own fund.

As to the effect of paragraph (d) of subsection (4) of section 744, on page 14, this is a feature of the Brussels Convention on liability for oil pollution damage. Actual fault or privity on the part of the shipowner is recognized in the Brussels Convention as a circumstance that denies the shipowner his right to limit liability. I expect this will be a feature common to the law of all the countries that give effect to the Brussels Convention on liability. I take it that the mere fact this is in the law does not deny people the right to claim against the fund when there is no fault or privity on the part of the person described and where his liability is limited and there is an excess of claims over the amount of his limitation. I cannot see that as a criticism of our legislation, since I expect it to be in the legislation of all the countries that accept the Brussels Convention.

The Acting Chairman: Are there any further questions?

Senator McElman: I think it might be useful if the witness could tell us how the costs of damages and clean-up with respect to the *Arrow* disaster were handled under existing legislation and the funds available for recovery, insurance or otherwise, in comparison to the proposed legislation.

Mr. Macgillivray: Under the existing legislation, in order to recover it would be necessary for us to sue the shipowner or the ship itself. In order to sue the shipowner we would have to serve him in his head office, which I believe is Panama—it is a Panamanian corporation that owned the *Arrow*. The alternative would be that while while we could possibly sue the ship itself while it sits on the bottom of the sea, there would be no point in launching an action because we are satisfied that the owner, the corporation, has no assets in Canada. The only other asset of that corporation that we knew of was another tanker of no great value, and if we were able to find that other tanker we could try and recover a judgment against it, but it would not be worth the cost of bringing an action. I must say that I do not think the final decision has been made as to how we are proceeding, but my understanding is that there is no point in trying to pursue the owner of that ship.

This is not a matter of limitation of liability, particularly; it is just the fact that the corporation that owned that ship was a corporation with very few assets. This is one of the features ot the present law, that you can have a one-ship company that can quite well avoid liability, even if you do not put limits in your legislation, by having just the one ship.

Senator Rattenbury: Is that not more or less standard in shipping?

Mr. Macgillivray: I think there is quite a trend towards that. There are quite a lot of one-ship companies. It is this type of thing that forces us into the situation where we are going to have to require proof of financial responsibility. But in the case of the *Arrow* The TOVALOP fund is available to us. I think our costs of clean-up and oil removal are over $3 million. That is the TOVALOP fund, which is the Tanker-Owner's Voluntary Arrangement for Liability for Oil Pollution. It is voluntary too, in the way Mr. Langelier has explained CRISTAL is, but we think that we can recover from TOVALOP a certain amount of money. The TOVALOP fund, in the case of the *Arrow*, would be about $1.1 million. It is related to the tonnage of the ship, so that there is a possibility of our getting up to about one-third of our costs. However, another point is that Imperial Oil went in and itself spent money in preventive and remedial measures.

Senator McElman: They were cargo only.

Mr. Macgillivray: Yes, and not under any liability to take any action. They did go in and they are in the position, as I understand it, of rating under the TOVALOP scheme with a claim for the costs they incurred. So

if there is $1.1 million available to us, which we think there is, we will be filing our claim of something over $3 million. Imperial Oil will be entering their claim; I do not know of any others. Then we will share prorata.

Senator Smith: Is the situation that the cargo that was lost would not have become the property of BA, to whom I understand it was destined, until it had been pumped on their property?

Mr. Macgillivray: I am not involved myself in the matter of the cleanup in the Chedabucto Bay situation. However, as I understand it we do not even know officially who owned the oil. Imperial Oil told us they owned it, but we do not know necessarily to whom it was consigned. Therefore I do not know when ownership would pass.

I understand that it is becoming more common for the consignee to take delivery f.o.b. the point of loading.

Senator Smith: I might suggest that this type of situation, where it is difficult to trace the real ownership at any one point, involves argument as to doing something which at first may appear drastic. Those of us who have personal knowledge of this particular spill have had a real experience. The situations which will develop in the future with the super tankers coming into our coastal waters will require measures much stronger than those we have had in the past.

We also appreciate the urgency of passing this in appropriate form.

The Acting Chairman: Mr. Macgillivray, I believe Senator McElman asked you how the *Arrow* situation would have been dealt with had this bill been in force.

Senator McElman: Let us say the fund had built up to an amount in excess of the $3-1/2 million covered in the case of the *Arrow* spill?

Mr. Macgillivray: In the case of the *Arrow,* under the new scheme we would hope that before the ship entered our waters we would have on file in the Department of Transport proof of financial responsibility up to the limit of that ship's liability. Its tonnage for liability purposes was about 11,000 and we are asking for $134 per ton for the bond. Therefore that would provide approximately $1,474,000 as the amount of its bond. Our costs being in excess of $3 million; there would not be sufficient left to satisfy our action. Had our national pollution claims fund been built up to approximately the $3 million mark, it would have handled the balance of those claims.

Senator Rattenbury: Do you mean that the recovery is dependent on someone, somewhere, establishing proof of financial responsibility prior to the arrival of the ship in Canadian waters, or is it on a continuing basis?

Mr. Macgillivray: No, it is intended that ships carrying pollutants in bulk will be require to have proof of financial responsibility on file in the department before they enter Canadian waters.

The United States legislation to which Captain Hurcomb referred last week, provides for this.

Senator Rattenbury: Does it work out?

Mr. Macgillivray: Their act comes into force on the first of April and we have not seen it in operation yet.

Senator Rattenbury: It seems to me that it could become rather cumbersome.

Mr. Macgillivray: That is quite possible, sir. However, if we do not have that then we are back to relying solely on the fund. Shipowners are in a position to establish one-ship companies so that their liability is meaningless when the ship is lost. However, under the regime proposed in this bill we would recover first against the bonds or other proof of financial responsibility filed by the ship. Following this, action would be taken against the pollution claims fund. In the event that the cargo owner were liable, or if for some reason the ship entered not having filed proof of financial responsibility, which quite possibly will happen, we would have to go against the fund for the whole amount. If by this time the cargo owner had been made liable we would be able to proceed against him to the extent of the ship's limited liability.

Senator Rattenbury: It is beginning to unfold itself in my mind that it may ultimately resolve itself into a situation where the owners of the cargo or the consignee of a cargo destined for an owner in Canada, which would be relatively infrequent I would think, would be the ones who would be covered or held liable for the placing of bonds and financial responsibilities. If you are going to chase single ships around the world and try to establish who owns them, who owned the cargo when it was shipped and to whom it was sold during passage, and so on—

Mr. Macgillivray: We will not have to prove who owned the ship if we have this proof of financial responsibility on file.

Senator Rattenbury: But you will need proof of financial responsibility by the shipowner. Therefore, you will have to prove the owner of the ship.

Mr. Macgillivray: It can be given on behalf of the ship by the insurance company. Ownership of the vessel might change as it frequently does.

Senator Rattenbury: The ship and the cargo change too.

Mr. Macgillivray: We are keeping in mind that international developments are taking place. As the minister has made clear, we were unhappy with the Brussels convention on liability for oil damage. However, we recognize that work is being done, and we are participating in it, on an international marine pollution claims fund.

Senator Rattenbury: You are referring to CRISTAL?

Mr. Macgillivray: No, CRISTAL and TOVALOP are both voluntary arrangements, which are intended to fill the gap until this international fund is agreed to in an international convention. I believe it is clear that both the TOVALOP and CRISTAL schemes will go out

of existence when an international fund convention comes into force.

Senator Rattenbury: Is that correct?

Mr. Langelier: This is quite so.

Mr. Macgillivray: Work is progressing. The present timetable is for a diplomatic conference in November of this year to settle on a fund convention. If the fund convention is arrived at and its terms are such that we think it covers the liability situation satisfactorily, then I think we will want Canada to belong to the convention.

Senator Rattenbury: Are you now saying this could be stop-gap legislation?

Mr. Macgillivray: Yes, sir.

The Acting Chairman: To some extent.

Mr. Macgillivray: To some extent. It seems quite clear that a feature of the fund convention will be that in order to belong to the convention a country must also belong to the 1969 liability convention. There is no question but that if a satisfactory fund convention is arrived at, the Government will have to go back to Parliament with amendments to bring the legislation into line with the two conventions.

Senator Rattenbury: I am happier now than I was last week.

The Acting Chairman: Any further questions?

Senator McElman: I have one supplementary question to put to Mr. Macgillivray. It concerns a further situation relating to another *Arrow* incident. Let us say the damage from such a spill were $10 million and there were the possibility of recovering from the liability insurance covering the vessel $1.5 approximately, which you speak of in this case. If the fund now being established stood at $5 million, you would have a recovery of $6.5 million, so $3.5 million remains. What access would there be for the cargo owner in that case to additional recovery?

Mr. Macgillivray: None, sir. The liability of the cargo owner when that provision comes into force is joint and several with that of the shipowner. If we recover against the shipowner or from the shipowner's insurance, that settles that joint and several liability. If the fund stood at $5 million there would still be a possibility of the Government bringing an item in an estimate and advancing money to the fund by way of loan. We did not put such a provision in the bill, but the way to do it would be to go on the Estimates for funds to meet a loan to this pollution claims fund.

Senator Bourget: Would that be agreed to by the house without legislation?

Mr. Macgillivray: No, it would be an item in the Estimates; it would be legislation.

Senator Bourget: Have they protested that type of estimate lately in the house?

Mr. Macgillivray: I do not think that is the type they protest. It would be a specific money item being advanced by way of loan for a specific purpose.

The Acting Chairman: And the amount may have to be specified?

Mr. Macgillivray: Yes.

The Acting Chairman: Which is different from a one dollar item.

Senator Bourget: It would not be a one dollar item?

Mr. Macgillivray: No..

Senator Thompson: Mr. Macgillivray said with respect to the CRISTAL fund that countries who belonged to the 1969 Brussels convention might not, having regard to the terms of the convention they have joined in, come under the auspices of the CRISTAL fund. Is that correct?

Mr. Macgillivray: I am trying to interpret the telegram from CRISTAL. I think what they are saying is that where a shipowner through personal fault or through privity loses his limitation of liability, CRISTAL will not fill the gap, such as might exist, above the limitation amount of the shipowner.

Senator Thompson: You brought this in with respect to the Brussels convention?

Mr. Macgillivray: I cannot report accurately on this because I am not familiar with it. There was a meeting last week in London to discuss the proposed international fund convention. I have not seen the report on it yet, but I understand that the likely form of the international fund to be established by the convention is such that it will contain the same exclusions to liability as the Brussels liability convention. I therefore expect that where a shipowner loses his privilege of limitation, the new international fund will not pay claims in excess of the limitation amount.

Senator Thompson: Can I infer from that that the CRISTAL fund would not apply to countries that have signed the Brussels convention, under the definition you are making?

Mr. Macgillivray: This is why I say I find it difficult to understand the telegram, because I know the CRISTAL fund is clearly intended to apply to and pay benefits in those countries that do bring their law into line with the Brussels liability convention.

Senator Thompson: Could we have clarification from Mr. Langelier?

Mr. Langelier: If we refer to the Brussels Convention No. 1, it will eventually have what has been adopted and ratified by the various countries, and the international compensation fund. The CRISTAL fund and TOVALOP, as was mentioned earlier, are both voluntary contributions, and they are stop-gap funds until such time as the Brussels convention has been ratified and the international compensation fund has been created.

Senator Thompson: If Canada will be excluded from CRISTAL, what other countries would this apply to if we pass this legislation?

Mr. Langelier: What I have been saying is that if Canada proceeds with Bill C-2 as it presently stands, having (1) unlimited liability in the event of fault or privity, and (2) a maritime claims pollution fund in an unlimited amount, CRISTAL will not respond to any claims made by Canadians.

Senator Thompson: Are there other countries associated with the Brussels convention that would require a similar situation to that of Canada in respect of this legislation?

Mr. Langelier: Canada is providing the world with a novel departure, because none of the countries which have agreements and shipping acts at the moment provide for unlimited liability. There is limitation of liability. Therefore, the CRISTAL fund would be operational as far as the fund is concerned and the claim would be paid.

Senator McElman: At the beginning of this month, Dr. McTaggart-Cowan, the Executive Director of the Science Council of Canada, and also in charge of the Chedabucto cleanup, made a public statement that a ship a week is going down in the oceans of the world, of the average of the class of the *Arrow*, and that 300 million gallons of oil is going into spills in the oceans of the world. Perhaps we could get some indication from Mr. Brisset as to the accuracy of this, and as to whether his organization would be able to confirm Mr. MacTaggart-Cowan's statement, and as to whether the damages caused by these spills are currently being covered?

The Acting Chairman: Mr. Brisset, have you any comment on that statement?

Mr. Jean Brisset, Q.C., Counsel, London Group of Protection and Indemnity Associations: Mr. Chairman and honorable senators, I cannot comment on the statement. It may well be that 52 ships a year go down in the oceans, but they are not all tankers. I would say most of them are dry cargo vessels. There have been spills in the past. I can only speak of the claims I have been attending to myself. We have had some in the St. Lawrence River. For instance, some years ago there was a tanker called the *Vibex*. She went aground near the eel fishing grounds near Orleans Island. There was quite a sizeable discharge of oil, causing considerable damage to the eel fishing installations along the whole of Orleans Island, and further down—even to a ship that was carrying live eels in the Port of Quebec. There were claims and I believe that the aggregate of the claims was of the order of about half a million dollars, and this was paid by P and I, Association.

There were minor spills elsewhere in the St. Lawrence over the years. I remember that in 1969 when the first Bill was presented to Parliament to deal with these questions, P and I representatives were present and submitted particulars. Unfortunately this goes back two years ago and I have not got them with me. They listed all the accidents that have occurred in our waters and indicated the amount of the indemnity they had to pay.

Prior to the *Arrow*, I do not recall that we have had any as serious as the *Arrow* accident. I mean, that this is the first really serious accident involving millions of dollars.

Perhaps Mr. Macgillivray can correct me if I am wrong there.

Mr. Macgillivray: No, I think that is correct, sir. I think this is the first, and I hesitate to refer to it in that term, as I hope it is the last.

In regard to such spills as the *Arrow*, we did have a tank barge full of oil sink in Howe Sound near Vancouver about five or six years ago and it cost us half a million dollars to raise that, of which we recovered something. Having salvaged the barge and the oil, we sold these and recovered that much, which was a small part of the half million dollars.

Senator McElman: And you have one now in the Gulf of St. Lawrence.

Mr. Macgillivray: Yes, and that will of course be raised as soon as the weather permits.

Senator McElman: Is that a Government supervised operation or a company supervised operation?

Mr. Macgillivray: I am not familiar with precisely the situation at the present time but I believe that the company intends to raise that barge.

Of course, we have a responsibility to be standing by and we will in effect be looking over their shoulder as they do it, to ensure that proper methods are used. We have the privilege under the law of stepping in and doing it ourselves if we feel they are not doing it properly. Until this bill goes through, however, we would have to go in as a volunteer and we would have no right against owners, if we did have to step in and do it ourselves. The only right we would have would be to the salvage.

Senator McElman: You spoke of the financial responsibility being filed on behalf of the shipowners. Do we currently have stringent regulations as to the seaworthiness of oil carrying vessels htat come into our coastal waters and visit our ports?

Mr. Macgillivray: No, we do not. This is one of the objects of the present bill. The whole philosophy of marine safety legislation has been in the past the safety of life at sea and it has all been aimed at ensuring that the ship when it leaves port is in a safe condition. So all of our laws are designed to ensure that ships leaving our ports are properly maintained, designed, and equipped. But we have no law, until this bill becomes law, that says that ships entering our waters must be in safe condition. Really, in this bill, we are adding a new objective of protection of the environment, protection against what damage the ship can do, whereas our earlier objective has been, as I say, the safety of life and the safety of the ship for that purpose.

Senator McElman: As I understand it, we are dealing with three types of vessels here, in so far as ownership

and liability are concerned. The major oil companies have their own vessels which are, I think, under subsidiary companies in many cases and are flying under another flag. These, as I understand it, are generally in pretty good shape.

Then we have the longterm charters that are made by the major oil companies which, as I understand this type of vessel, under long term charter, are generally in pretty good shape.

Then we have the short term plan, the one ship, that Senator Rattenbury was speaking about. I understand that many of these are in pretty awful shape and do constitute a very real danger to any coastal waters.

Do you feel that the legislation which is proposed now that joins the shipowner and the cargo owner will give us added protection in this area, too?

Mr. Macgillivray: I think the ultimate protection in this area will be regulations respecting the safety of the ship itself. The bill does provide for us to have regulations regarding the construction of the ship, its maintenance in good shape, and its equipment, even the manning of it. We are able, under this, to bring in a scheme where the ship would have to provide proof that it is being maintained in proper shape. I think this is the best weapon to ensure that ships coming into our waters will not be a hazard, from the moment they enter our waters, due to their condition.

However, one of the thoughts in adding cargo owner liability has been that we should perhaps encourage the cargo owners to be more selective in their charter arrangements. We have had pointed out to us that this is not the way the charter market operates and that ships must be chartered sometimes on a matter of a few hours' or a few days' notice. However, maybe the way the charter market operates is not the best in order to prevent pollution. This was one of the objectives in placing the liability on the cargo owner, to try and make him more selective.

Senator Burchill: Mr. Macgillivray, I want to refer again to the point I raised the other morning about the danger of a spill, not particularly from an oil tanker but from any type of diesel vessel, in the smaller harbours or ports like our local ports of Newscastle and Chatham which, as you know, handle a substantial amount of shipping,

Senator McElman: On the Miramichi.

Senator Burchill: Yes, on the Miramichi. Suppose we have a spill there—you know what the Miramichi is, Mr. Macgillivray; the greatest salmon river in the world.

The Acting Chairman: Coming from you, Senator Burchill, we accept that.

Senator Burchill: That is a fact. The former minister of Fisheries would confirm that. Senator Rattenbury does not care because he is in the Port of Saint John and your office is in the Port of Saint John, and you can take action, but if we have a spill on the Miramichi there is no one in authority to do anything about it. I do not think it would be too much with which to entrust the harbour master, for instance—and I am just mentioning him as one official who might be the one to communicate with your department in Saint John. I want somebody on the spot there to take the responsibility of notifying your department that there has been a spill. There is nobody there now at all. You admitted that the other morning.

I have a letter from the Minister of Transport that our harbour master is being retired on account of age much against his will. I think he is just as capable of doing the job now as he ever was. Be that as it may, the minister is going to retire him because they need a younger man to perform all the duties of harbour master. That is not a very heavy duty to impose on a harbour master, to keep an eye on the oil spills in the river, is it?

Mr. Macgillivray: No, it is not, senator. As you know, there are provisions in the bill for the appointment of pollution prevention officers. They can be given very wide powers, although what you are asking for here is really only that there be somebody on the spot to alert the office in Saint John.

Senator Burchill: That is right.

Mr. Macgillivray: We have tried under our present oil pollution prevention regulations to encourage very prompt notification of the department when any kind of spill occurs, whether from such a thing as a grounding or other ship casualty, or the pumping of tank washings or some other means of getting the oil into the water. We have tried to encourage all people to report to our reporting offices promptly, and quite often we do get very quick reports.

I will take a special look at the situation on the Miramichi, and I feel quite sure that the harbour master or somebody can be persuaded that he should report promptly.

Senator Smith: If I have a moment, I would like to point out that he does not need to be reminded of it. There are a great many ports of the same character as Senator Burchill's. I do not think we are narrow minded about this thing at all, but I am quite conscious of the relatively heavy traffic that gos into the port I live in where there is a newsprint industry, and so on, and where there is peaking power generation by oil. It seems to me that is a very hazardous situation as far as another salmon stream is concerned and a harbour which today is already polluted to a certain extent by the effluent of the newsprint industry. It seems to me that orders should be sent out to the harbour masters in all these ports making it part of their duty to keep an eye on this very thing and to report it to their district office, which in this case I suppose would be Halifax. I am glad Senator Burchill raised this point because I think it is very important.

The Acting Chairman: I am sure Mr. Macgillivray will take notice of this suggestion.

Senator Kinley: This bill provides for the appointment of an administrator who seems to have wide powers and seems to be in control of the situation almost completely. Is that your attempt to give proper effect to the law?

Mr. Macgillivray: I do not think the administrator has very wide powers. His only powers are in relation to the pollution claims fund, and he has no powers of any other kind. His powers are to accept payments into the fund and to make payments out of it in the appropriate cases.

Senator Kinley: How are you going to control this pollution? You cannot with the powers you have now, so you have to have some extra way of preventing it.

Mr. Macgillivray: Yes, the administrator is not part of the scheme of controlling pollution. He fits into the scheme for ensuring that there will be adequate recovery by persons damaged when an incident does occur.

Senatol Kinley: It says:

> "Administrator" means the Administrator of the Maritime Pollution Claims Fund.

The Acting Chairman: This is exactly what Mr. Macgillivray has said.

Senator Kinley: This fund you are setting up is based on 15 cents a ton.

Mr. Macgillivray: It will be an amount of not more than 15 cents a ton.

Senator Kinley: You could make it less if you wanted to?

Mr. Macgillivray: Yes.

Senator Kinley: That is about seven mills on the gallon, to put it into the language of the street. If I am buying oil it means about seven mills on the price of oil. That is not a very heavy tax, is it?

Mr. Macgillivray: No, I do not think it is, but I think we must recognize—

Senator Kinley: The oil companies the other day said they were going to have the vessels incorporated. It appears from this that the obligation of a shareholder would be 2,000 gold francs, is that not right?

Mr. Macgillivray: Yes, 2,000 gold francs per ton of the ship's tonnage is the limitation amount.

Senator Kinley: The Napoleon gold franc is worth about 64½ cents.

Mr. Macgillivray: No, this franc is worth about six and two-thirds cents.

Senator Kinley: This is not the Napoleonic franc?

Mr. Macgillivray: No.

Senator Thompson: Mr. Chairman, I would like to hear clearly from Mr. Macgillivray with respect to one of the major contentions of the briefs, this first level of liability, and the principle that the cargo owner considers that he should not be liable with the shipowner.

At page 3:12 of the *Proceedings* of Mrch 17, 1971, Mr. Lewtas said:

> When we asked why they did not—

That is, why they did not separate this, and have the cargo owner at the second level of responsibility through the Maritime pollution payments—when he was asked in the other place with respect to this, he said:

> When we asked why they did not, only one rejoinder was made to us, and that was to the effect that apparently there was some thought that, if the cargo owner was made jointly and severally liable at that first level of liability, he would in some indefinable way be more careful in selecting the ships which he chartered—

And so on.

We have listened to the points with respect to the capability of maintaining the ships, that they are seaworthy and have financial responsibility.

Do you consider that first principle to be more than just an indefinable way in which the cargo owner assumes responsibility?

Mr. Macgillivray: The responsibility is not indefinable; it will be placed on the cargo owner by statute once the order in council is passed bringing that feature into force. In my opinion Mr. Lewtas' use of the word "indefinable" was descriptive of the suggestion that I have referred to a little earlier this morning, that one of the objectives in asking for cargo owner liablity is to make the cargo owner a little more selective in the chartering of these tramp vessels.

Senator Thompson: Will the cargo owner perhaps escape this if it is a one-ship owner? It will be traced back to him in connection with owner responsibility. The cargo owner will be careful before he picks on that particular ship.

Mr. Macgillivray: I think there would be an incentive to the person in, say, an oil company who is responsible for chartering, if he had a choice between two ships and knew that the owner of one had a reputation for maintaining his ship in good condition, to select that ship in preference to another, even if there were a slight cost difference.

Senator McElman: Is the *Arrow* not a case of the type of company you have suggested? It was a two-ship company, Panamanian registry and the findings as I recall have been that the navigational equipment, including the—

Senator Rattenbury: And the use thereof.

Senator McElman: The sonar, radar, or whatever it was, was not functioning and this vessel was entering very rugged waters; the east coast is a very rough area and it was coming in through a storm. This vessel was not in truth seaworthy.

Is that not a case in point of the question raised by the senator?

Mr. Macgillivray: The *Arrow* is definitely a good example of the type of ship we would hope that people would not charter.

Senator McElman: Exactly.

Mr. Macgillivray: It was not in good shape.

Senator Kinley: This act will look after that.

Mr. Macgillivray: I do not think this act will look after anything in final form.

Senator Kinley: It will make sure that the ships are safe.

Mr. Macgillivray: It provides an opportunity to improve the situation.

Senator Kinnear: Did Mr. Macgillivray say that Imperial Oil was the charterer of that cargo?

Mr. Macgillivray: As I understand it, Imperial Oil were owners of the cargo on the *Arrow*, yes.

Senator Kinnear: It seems to me that a company the size of Imperial Oil should know the condition of a vessel that it is chartering. I am surprised that they would use a vessel such as the *Arrow*. Would you not think they would know that vessel quite well?

Mr. Macgillivray: I think perhaps there are witnesses here representing Imperial Oil who would be more competent than I to answer that.

Mr. J. L. Lewtas, Q.C., Counsel, Petroleum Association for Conservation of Environment—Imperial Oil: There are one or two points that should be made clear: when Imperial Oil chartered the *Arrow* they knew that the ship met in every respect the requirements of the world insurance industry. Those with the responsibility of classifying that ship had pronounced it to be in A-1 condition.

Another point that I believe I should bring out is that no one here, least of all Imperial Oil, is speaking proudly and gratefully with regard to the *Arrow* incident. We admit that, apparently retrospectively, it was discovered that certain navigational equipment of a sophisticated nature on the *Arrow* was not working properly.

The judge who conducted the inquiry specifically found the reason the vessel went aground was because the captain failed to use the most elementary type of navigational technique.

Senator Rattenbury: It was human error, in other words.

Mr. Lewtas: Human error indeed; he only had to take bearings on a few lights, for which he had all the visibility necessary. Therefore, whether or not the radar was working properly in this particular incident, made no difference whatsoever. As we said in our evidence at the other place, it does not matter how well we select a vessel; the plain fact of the *Arrow* incident is that even the best of them are not built to go overland.

Speaking also to this business of selection of ships, when I referred to "some indefinable way" in which we would improve the nature of the ships chartered, I meant just that. The oil companies take great pride in their chartering practices. The best ships are employed most regularly.

The fact is, however, that when a chartering manager of a major oil company finds that a cargo has to be moved, he does not have that much discretion. He knows that he requires a ship that will carry a certain quantity; he knows that that ship must be on location to pick up the cargo at a certain time and right there he has limited himself tremendously to the number of ships. He has to consult his records to find out where ships of that description are geographically and how they are committed to other people. Almost immediately his choice has come down to very few ships indeed. At that point he has to pick the ship which is best suited to his requirements. He does not have weeks to do this; he cannot get on an airplane and go around the ship beating a hammer to see whether it is in shape. He has literally very few hours to make this decision and if he has hours, indeed, what he does is then a function of two things. First of all, he must know that that ship is fully rated and classified by all the classification societies in the world which are applicable to it and that will be an indication to him that the ship is fully insured.

The other thing he will have is his own personal blacklist. They all know there are certain ships and ship owners which they do not wish to deal with, and they will not deal with them.

Senator Kinley: I have a question in regard to insurance. The insurance people must be careful. If they do not insure a ship, what happens to it?

Mr. Lewtas: If the insurance company will not insure the ship you can be sure it will not be carrying an Imperial Oil cargo.

Senator Kinley: If it is not insured you will not give it a charter?

Mr. Lewtas: It does not go to sea.

Senator Kinley: I suppose if they opened the Suez Canal your problem would be half settled?

Mr. Lewtas: Most of the ships coming from Venezuela to the Maritime provinces do not use this.

Senator Kinley: I believe they raised their prices the other day. The press said they did.

Mr. Lewtas: My instructions are that we have not raised our prices recently.

Senator Thompson: What was your point that the cargo owner has little choice except to the point that ships are covered by the world organizations? Is this the only thing which he can rely on.

Mr. Lewtas: Yes. My point is, with all respect to Mr. Macgillivray, that the addition of the cargo owner to the first level of joint liability will not have a minimal effect on the improvement of the type of ship operating. What will have that effect, and I believe Mr. Macgillivray says it himself, are stringent and effective Government regulations.

Senator Kinley: You said that the ship went aground, but I think she struck a rock in 70 feet of water. I do not know how they found that shoal. It seems to me it was

bad seamanship. Notwithstanding the fact that their electrical apparatus was under repair, most of them now check with the fathometer and the sextant, but this is an unusual happening. Have you any thoughts with regard to this?

These ships which pay low wages prevent us from having a merchant marine of our own, and ships which can be run cheaply are a menace to the country. The question is how much does it cost Canada not to have a merchant marine? Halifax was blown up by a second-hand ship which carried a cargo of TNT. There were barrels of this inflammatory material on deck. The ship was run into by a Norwegian vessel, and sparks ignited the material and caused an explosion that wrecked the city of Halifax. They did not have a good crew nor were they up to the mark.

The registration of companies and ships in Canada seems to be something which is not in the interest of the maritime provinces. We are naturally a seafaring people, and then we have unemployment. Our boys used to go to sea, but now the only merchant marines are found working in the lake regions. We should have a merchant marine in Canada. There is a trinity—the insurance company, the oil company and the vessel. I do not think you can come before any committee and tell it that you have nothing to do with vessels, that vessels have nothing to do with cargoes, and that cargoes have nothing to do with insurance, because I know they are very closely related.

You made an important statement here, that the ships were going to be incorporated. What does that do to the oil companies, or to any ship? Does it relieve them of the responsibility of a shareholder? It is fixed by statute in Canada as to how much one must pay if the ship gets into trouble. If it is incorporated there is no liability, except a special liability which you cannot afford. Fault is very important in regard to insurance matters. When I hire a vessel to take a cargo I expect the vessel to carry it without trouble for myself, but if the vessel is going to carry a cargo which will explode or destroy the country there is a dual responsibility. It seems to me that is the reason that this problem is here with regard to shipping.

This is good legislation. I do not think the expense on oil is very high, nor do I think the obligation on a shareholder who has fault and does something special is very high. It is only 2,000 francs.

Mr. Lewis: Mr. Chairman, I observed that when we were making our submission last week we were not objecting to the Maritime fund at all.

The Chairman: I believe, Senator Kinley, that you have made your point. You have stated that this legislation would provide means to the minister to introduce proper legislation in order to take care of situations such as you have just cited.

Honourable senators, if it is your intention we may go through the bill clause by clause. Mr. Macgillivray may point out subjects or clauses where the minister may be prepared to introduce a bill at a later date to bring in some amendments.

Shall clause 1 carry?

Hon. Senators: Carried.

The Acting Chairman: Clause 2 covers Part XIX which is headed "Pollution". Does section 736 in Part XIX carry?

Hon. Senators: Carried.

The Acting Chairman: Mr. Macgillivray, as we come to clauses in respect to which you wish to point out the study the minister is prepared to make, or the amendments which he might be prepared to consider at a later date, you may intervene.

Mr. Macgillivray: Yes, I will. And as we move along if I fail to mention something, please call it to my attention.

The Acting Chairman: Does section 737 carry?

Senator Thompson: With regard to that clause, we have talked of oil in regard to pollution but, as I understand it, the definition can be and is broadened according to the order in council.

Mr. Macgillivray: You will notice that the definition of pollutant is very wide, and in the concluding words of the definition it includes oil and any class of substance that is described by the Governor in Council. Therefore, we can aim at specific pollutants for the purpose of the act.

Senator Rattenbury: This is one of my objections, we are only establishing funds for ships carrying oil and not other possible pollutants.

The Acting Chairman: I understand this will come up in a later section.

Hon. Senators: Carried.

The Acting Chairman: Shall section 738 carry?

Hon. Senators: Carried.

The Acting Chairman: Shall section 739 carry? This is the section dealing with regulations. Have you any comment on that particular section, Mr. Magillivray?

Mr. Macgillivray: This is a section that has not been commented on by any of the witnesses who have appeared before this committee, although you will have noticed that in the brief of the International Chamber of Shipping which was printed as an appendix to your proceedings, the Chamber repeated before this committee what it said in the committee of the other place—that they are very loath to see such wide regulatory powers taken, and they are afraid that in the application or exercise of these regulatory powers we might proceed unilaterally and not in line with internationally accepted practices. I think in this regard they really will have to wait and see what the regulations look like. It would be very difficult to change this so as to ensure that regulations would be only such as would be accepted internationally.

The Acting Chairman: Shall section 739 carry?

Hon. Senators: Carried.

The Acting Chairman: Shall section 740 carry?

Hon. Senators: Carried.

The Acting Chairman: Shall section 741 carry?

Hon. Senators: Carried.

The Acting Chairman: Shall section 742 carry? Mr. Macgillivray, do you have any comment on this section.

Mr. Macgillivray: Mr. Chairman, we are now into the subject of civil liability which is the subject that has principally engaged the attention of the witnesses who have appeared before this committee. I believe the witnesses representing the oil companies have objected to the inclusion of section 743(1)(b). This is the one which empowers the Governor in Council to prescribe classes of ships in relation to which the owner of a cargo will be jointly and severally liable with the owner of the ship. This is one of the objections that I brought to the attention of the Minister. This is not one of the cases in which we would be prepared to accept an amendment, and in the Minister's undertaking that he would be prepared to consider amendments, I do not think that this is one that would be included. We would certainly have to see a considerable change in the international picture in relation to the civil liability convention and the proposed fund convention before the Minister would be prepared to drop this feature.

Senator Kinley: This was passed by the House of Commons?

Mr. Macgillivray: Yes, and it was passed, I believe, without amendment.

The Acting Chairman: Shall section 743 carry?

Hon. Senators: Carried.

The Acting Chairman: Shall section 744 carry? This has to do with the limitations and liability. Do you have any comments on this clause, Mr. Macgillivray?

Mr. Macgillivray: Mr. Chairman, if I may just revert to section 743 for a moment, I said I thought it had been passed without amendment but actually there was an amendment in the Commons committee where subsection (5) was added at the top of page 13. This again is not a matter that has been brought specifically before this committee by any of the witnesses. It is not a matter which has caused any objections.

Senator Thompson: Mr. Chairman, I would like to state that I appreciate it appears that the purpose of joint responsibility is to make the cargo owner equally responsible. I think the points raised by the witnesses were based on the fact that the joint responsibility could lead to redundancy in the area of insurance costs. The liable person is the ship owner. I notice the points raised about this concerned the danger to the environment, particularly the one raised by Senator Kinley about high explosives in Halifax and that the cargo owner should share in the responsibility. Has that principle been applied before that where high explosives are involved, the cargo owner shall share responsibility?

Mr. Macgillivray: There is a precedent in the case of nuclear cargo. That is a very recent precedent in Canada having been brought into law in the last session of Parliament. It was the first legislation dealing with liability in the case of disastrous incident, and it was a case of focusing liability on the one person who can carry the insurance. The principle was first initiated in international discussion about 10 years ago in a previous Brussels Convention on the liability of owners of nuclear ships where absolute liability was for the first time a feature of an international convention.

The Acting Chairman: Do you have any comments on section 744, Mr. Macgillivray?

Mr. Macgillivray: This is a clause which has attracted a good deal of attention and created a considerable amount of interest on the part of all the witnesses who have appeared here. Mr. Brisset made a recommendation to the committee that you consider an amendment that would provide for the procedures to be followed in limitation proceedings. This is one of the points that the Minister has agreed he will be prepared to come forward with and bring an amendment before the end of the year that will tidy things up so that we can proceed with the bill and get the desirable features of it into law.

Senator Kinley: In the meantime he wants it carried?

Mr. Macgillivray: Yes.

Senator Kinley: And he will look after it afterwards?

Mr. Macgillivray: Yes.

The Chairman: I believe there may be other points raised relating to section 744.

Mr. Macgillivray: Yes. There were points raised by the four representatives of the oil companies. I think they were unanimous in wanting to allow the owner of the cargo to limit his liability even in the case where a ship owner loses the benefit of limitation by reason of his fault or privity.

This is a matter that is under consideration and is one to which the minister is inclined to give favourable consideration in connection with a proposed amendment later in the year.

Senator Bourget: What would be that amendment?

Mr. Macgillivray: It would clarify the situation. Under the law as it stands a cargo owner, when he is made liable, will not have the limitation when the ship owner loses his right of limitation. It will be a clarifying amendment, that where an accident occurs and damage is such that limitation comes into question, and there is this joint, several liability, the cargo owner would be entitled to limit his liability in relation to the tonnage of the vessel even if the ship owner loses his privilege of limitation due to the fact that he is personally at fault.

Senator Bourget: That is assuming negligence is on the part of the ship owner?

Mr. Macgillivray: Yes, sir, the owner's negligence as distinct from negligence of the people on board the ship.

When the people on board the ship, those navigating it, are at fault, the owner is still liable, but he may limit; but when he is party to the fault or actively is at fault himself then he is not entitled to limit.

The oil companies have asked this committee to clarify that they will be entitled to limit whether or not the ship owner is at fault. They have also asked for the provision to be inserted that they would have a right against the ship owner when recovery is made against the cargo owner. If the damaged person feels that it is easier to sue the cargo owner and he recovers the damage, the cargo owner wants to have a right over against the ship owner. This is another matter which I think the minister would be prepared to consider in the proposed amendment.

Senator Kinley: It is a bit intricate.

Mr. Macgillivray: Yes, it is extremely intricate.

Senator Kinley: I hate to interfere with the minister's bill unless he says so, because it is very technical.

The Acting Chairman: Are there any further comments?

Mr. Macgillivray: Mr. Brisset asked also that the ship owner, or the cargo owner, I take it, who has paid out damages arising from an incident, or who has gone to some expense in cleaning up or has taken preventive measures, should be in the same position as that of a claimant against his own limitation fund. His liability would be somewhat reduced by reason of the fact that either he has already paid claimants or he has gone to the expense of mitigating the damages. This is another feature.

While I am not in a position to promise that that aspect will be included in the minister's amendment, it is definitely being actively considered.

Mr. Brisset also asked that the insurer should be allowed the same defences as the insured, and also a further defence if the ship owner willfully causes the accident. From my own reading of the bill I do not consider this to be a necessary amendment. In the event that there is action against the insurance company I believe the insurer would be given the same defences as the insured and the same limitation.

Senator MacElman: He has always had that.

Mr. Macgillivray: Yes, and I do not think this changes that. Certainly, if he does not have it, then we are open to persuasion, and this could be a feature of the proposed amendment.

The Acting Chairman: Are there any further comments on section 744?

Senator Thompson: Captain Hurcomb raised the point that the United States was far more specific in its legislation in covering the exceptions. I think that Mr. Macgillivray in evidence said he would take note of that.

Mr. Macgillivray: Yes, that is true. I think we are back to the previous section. I should have mentioned this point, and perhaps I could do so now.

The Acting Chairman: Yes, you may.

Mr. Macgillivray: I brought this point to the attention of the minister, but the fact is that the exceptions contained in section 744(4) are those contained in the Brussels Convention and which were recommended to the committee of the other place and accepted by that committee. We would be out of line with the Brussels Convention and with the majority of the rest of the world if we changed this.

Senator Thompson: There has been some talk about the St. Lawrence Seaway and trying to get mutual agreement with the United States. I understand that the United States has one further exception. Do you see advantages in our trying to make arrangements with the United States if we had the same exceptions they have?

Mr. Macgillivray: In our discussions with the United States we will be looking at this aspect. There are other points made by Captain Hurcomb, but we will deal with them when we come to the other sections. This exception on the basis of the negligence of another party would virtually destroy the intent of this part of the bill.

The Acting Chairman: Is there anything further on this section?

Mr. Macgillivray: I believe I have covered the points raised by the various witnesses.

The Acting Chairman: Shall section 744 carry?

Hon. Senators: Carried.

The Acting Chairman: Have you any comment on section 745, evidence of financial responsibility?

Mr. Macgillivray: With respect to this clause there was a point raised by Captain Hurcomb to the effect that Canadian ships passing through United States waters in the Great Lakes are required to file proof of financial responsibility in the United States. Under this clause they will be required to file proof of responsibility in Canada. That point was also raised by the International Chamber of Shipping.

As I said in my opening remarks today, Mr. Chairman, it is going to be necessary for Canada to work out some compatible legislation with the United States. We do intend to get into discussions with them at the earliest possible date.

Another point Captain Hurcomb raised was that while the Canadian ships are required to prove financial responsibility in the United States when they are passing through United States waters and are not calling at a U.S. port, this bill does not provide for United States ships to have to prove financial responsibility when they are merely passing through Canadian waters and not calling at our ports. The minister is prepared to consider bringing that matter forward with the amendments later. However, when the discussions between the United States and Canada have taken place it may be that the picture will have changed such that this aspect will become immaterial. In other words, we may be able to work out a common system of proving financial responsibility.

The Acting Chairman: Shall section 745 carry?

Hon. Senators: Carried.

The Acting Chairman: Are there any comments on Section 746?

Mr. Macgillivray: A number of the witnesses refer to this clause as the "secondary liability of the cargo owner" clause, with respect to their having to pay into this fund.

This matter also comes under section 757, but it is as well to deal with it here since it does refer to payments in.

Th minister is not inclined at this stage to consider withdrawing this provision. We will have an opportunity to see how the CRISTAL Fund works after April 1. We will have an opportunity to consider the progress that is being made on the International Fund as things proceed in London in preparation for the November conference on the subject. It may be that there will be some modifications that could be suggested to the National Fund by the time we come back before Parliament. But at the present time it seems pretty clear that we are intending to maintain a fund, because there are exceptions to liability and there are limits to the amounts that you can recover from any international scheme. Therefore, it is quite likely that we will want a fund that will cover the excess of that.

The Acting Chairman: Shall section 746 carry?

Hon. Senators: Carried.

The Acting Chairman: Shall section 747 carry?

Hon. Senators: Carried.

The Acting Chairman: Section 748?

Hon. Senators: Carried.

The Acting Chairman: Section 749?

Hon. Senators: Carried.

The Acting Chairman: Section 750?

Hon. Senators: Carried.

The Acting Chairman: Section 751?

Hon. Senators: Carried.

The Acting Chairman: Shall section 752 carry?

Hon. Senators: Carried.

The Acting Chairman: Section 753?

Hon. Senators: Carried.

The Acting Chairman: Section 754?

Hon. Senators: Carried.

The Acting Chairman: Section 755?

Hon. Senators: Carried.

The Acting Chairman: Section 756?

Hon. Senators: Carried.

The Acting Chairman: We now come to section 757 and I understand Mr. Macgillivray has a few comments to make with respect to it relating back to section 746.

Mr. Macgillivray: There have been a number of points raised in connection with payments into the fund. First, it has been suggested that there should be a limit on the fund of possibility $10 million. That point has been considered by the minister and was considered previously by the Government. It was the Government's decision not to place a limit on the total amount of the fund.

There was also a suggestion that the claims fund should be brought into force by proclamation so that, recognizing that we have not had time to study it, we would have time to study the new CRISTAL scheme. I think this is an amendment the minister would not want to see. You might note, however, that the fund will not come into being until an Order in Council is passed under this section specifying the amount to be paid into the fund. So there could, in theory, be time to delay the bringing into operation of these provisions.

Senator Kinley: The act would not come into force, except section 745, until a day fixed by proclamation. So that is covered anyway.

Mr. Macgillivray: Yes, that is right, sir, but, of course, it is the intention of the Government to bring the act into force at as early a date as possible because of the fact that there are so many desirable features of it.

Other points were made by the oil company witnesses here, which I brought to the attention of the minister. There was a suggestion that claims for damage by pollutants other than oil should not be paid out of the fund until such time as we have set up a scheme for contributions to the fund in respect of these other pollutants.

Senator Kinley: Oil includes the derivative gasoline and other things?

Mr. Macgillivray: Yes. There is a wide definition of "oil". It is not yet clear whether this would be one of the amendments the minister would be prepared to bring forward at a later date. I do not think it needs an amendment anyway.

The Acting Chairman: There are the regulations.

Mr. Macgillivray: Yes, it would need an amendment.

Senator Rattenbury: We are discussing section 757 now?

Mr. Macgillivray: Right. In a later clause we will see that there is provision for regulations to be made respecting payments into the fund.

The Acting Chairman: I believe section 758 (b) would cover that point.

Mr. Macgillivray: Yes, that is the one. The suggestion was that there should be no claims paid out of the fund for pollutants other than oil until such time as we had a scheme for having the other contributions in respect of

those other pollutants. I think it must be recognized that so far the only pollutant that would be covered by this is oil. Oil now constitutes 60 per cent of ocean commerce, and the amount seems to be going up every year. Oil is the thing we must get at first, but I cannot say this is an amendment the minister would be prepared to bring forward.

Senator Rattenbury: Mr. Macgillivray, I am cognizant of cargoes being carried into Canada, such as chemicals from the United Kingdom, that are possible pollutants and equally as dangerous as oil.

Mr. Macgillivray: This is an area of very serious concern to the Government, not only to our Government but to other governments. A group of experts was organized by a number of the international organizations, including IMCO, to make a report identifying the other pollutants that are being carried by ship. They have now produced a report and they list some hundreds of them that are being carried, some in bulk and some in packages. Some of those carried in packages are just as dangerous as if they were in bulk. New chemicals are being created at the rate of some hundreds per year, I think 300 per year, and there is a need for every one of them to be studied to see whether it is a pollutant. There is a big job of work to be done in identifying these other pollutants and bringing in restrictive regulations in respect of them. I must confess that the work has only begun on this, not only in Canada but throughout the world.

Senator Rattenbury: I am perhaps thinking in broad terms, but one cause of what we might term a disaster would be the carriage of sulphuric acid into a pulp mill.

Mr. Macgillivray: Yes, sir, or the carriage of phosphorous into Placentia Bay. It is going on, and one provision in this bill will allow us to regulate tank washings from the ships, because we found that ships bringing phosphorous into Placentia Bay were washing their tanks shortly after leaving it and causing damage to the fisheries.

Senator Rattenbury: That is right.

Senator Kinley: They kill the fish.

Senator Rattenbury: It seems to me that perhaps we could be a little insular in our approach to this problem.

The Acting Chairman: In section 758(c), dealing with regulations, the bill provides authority for the minister to take care of such other pollutants than oil. We will come to it after we pass this section.

Senator Rattenbury: I have read that, but I do not quite agree with you, Mr. Chairman.

The Acting Chairman: Are there any further comments on section 757?

Mr. Macgillivray: I may not have mentioned all the points raised by the witnesses, but I should say that every one of them has been brought to the attention of the minister, and every one of them will be considered in connection with a bill later in the year to improve this legislation.

Senator Kinley: The minister does not want us to delay this bill.

Mr. Macgillivray: That is right, sir.

The Acting Chairman: Shall section 757 carry?

Hon. Senators: Carried.

The Acting Chairman: Section 758 deals with regulations, which we discussed partly with section 757. Shall section 758 carry?

Hon. Senators: Carried.

The Acting Chairman: Section 759, dealing with interest on unpaid amounts. Shall section 759 carry?

Hon. Senators: Carried.

The Acting Chairman: Section 760. Are there comments on this, Mr. Macgillivray?

Mr. Macgillivray: This is the section in respect of which Mr. Phillips, on behalf of Gulf Oil, suggested that payments should not be made out of the fund in respect of claims for damage by pollutants other than oil until we have contributions by those. This will be considered. The minister really has not made up his mind whether he would favour that or not.

The Acting Chairman: Shall section 760 carry?

Hon. Senators: Carried.

The Acting Chairman: Section 761.

Senator Kinley: These are the penalties. They are good and high, and perhaps they need to be.

The Acting Chairman: Shall section 761 carry?

Hon. Senators: Carried.

The Acting Chairman: Shall section 762 carry?

Hon. Senators: Carried.

The Acting Chairman: Shall section 763 carry?

Hon. Senators: Carried.

The Acting Chairman: Shall section 764 carry?

Hon. Senators: Carried.

The Acting Chairman: Shall section 765 carry?

Hon. Senators: Carried.

The Acting Chairman: Shall section 766 carry?

Hon. Senators: Carried.

The Acting Chairman: Shall section 767 carry?

Hon. Senators: Carried.

The Acting Chairman: Shall section 768 carry?

Hon. Senators: Carried.

The Acting Chairman: Section 769?

Senator Kinley: This deals with seizure. This is where you seize the ship, is it not?

Mr. Macgillivray: Yes, sir, it is in effect the arrest of a ship similar to civil arrest.

Senator Kinley: We have signed a convention which carries us out 100 miles. Can we seize a ship over the 12-mile limit?

Mr. Macgillivray: No, sir.

Senator Kinley: How do we collect under this international arrangement?

Mr. Macgillivray: That is one of the defects of the international convention on the prevention of pollution by oil, that prosecution has to be in the country of registry, unless the offence takes place within the national waters of another country, and this has just not yet been cured.

Senator Kinley: I think England voted against us on that. George's Bank is one of our great fishing grounds. If vessels go across that bank and clean the scuppers coming across the bank and go into Portland, they are coming right across the fishing grounds of Canada. It is very important that we keep these waters clean. When we pass this bill, it is a regional matter; it does not apply to the Pacific coast. One senator claimed its effect went up and down the coast, but I think this has been amended since. Is that not so, Mr. Macgillivray?

Mr. Macgillivray: There have been a number of amendments.

Senator Kinley: Did they extend it out from Newfoundland and Nova Scotia?

An hon. Senator: The lines were drawn, were they not?

Mr. Macgillivray: This is not a matter of drawing the fishery closing lines. This is an international agreement under which countries agree to prohibit their ships pumping oil into the high seas and the limit is 100 miles off the Atlantic coast in that case.

Senator Kinley: I understand it ran along a certain parallel, I think it is south of 60 degrees, is it not, and it just touches the shoal part of Newfoundland. We understood that that was passed. I remember when it was passed, as I was in Parliament when it was passed. Some of them wanted a thousand miles. Great Britain wanted 1,000 miles, into the Mediterranean, because of the hazard of shipping. We always felt we did not get enough in Nova Scotia. I hope we can convince the United States that we have a common interest in the fishing and that they will help us out at the next conference.

Mr. Macgillivray: The recent developments are such that we can look forward to vast improvements in that convention. The United States has taken the official position that they want to achieve by 1975 the complete elimination of all pumping of oily wastes into the oceans of the world.

The Acting Chairman: Shall section 769 carry?

Hon. Senators: Carried.

The Acting Chairman: Shall section 770 carry?

Hon. Senators: Carried.

The Acting Chairman: Part XIX is covered entirely by clause 2 of the bill. Shall clause 2 carry?

Hon. Senators: Carried.

The Acting Chairman: Shall clause 3 carry?

Hon. Senators: Carried.

The Acting Chairman: Shall clause 4 carry?

Hon. Senators: Carried.

The Acting Chairman: This completes all the clauses of the bill. Shall I report the bill without amendment?

Hon. Senators: Agreed.

Senator Kinley: Mr. Chairman, we should understand that this concerns foreign shipping foreign oil, and foreign insurance. There is no Canadian interest in it, except the price of oil.

The Acting Chairman: Thank you, Senator Kinley. Thank you, Mr. Macgillivray. I also wish to thank the witnesses who have appeared, and who have given us such valuable information regarding this bill.

The committee adjourned.

APPENDIX

TO:—BP OIL LIMITED MONTREAL 995 22.3.71

FROM:—BP TC

FOR MR J LANGELIER FROM LEGAL AND CLAIMS P.A. MEDCRAFT BILL C-2 YOUR TELEX 18TH (STOP)

QUESTION OF REPONSE OF CRISTAL TO CLAIMS IF BILL C-2 BECOMES LAW IN PRESENT FORM HAS BEEN CLOSELY CONSIDERED BY OCIMF WORKING GROUP TODAY (STOP) B.A. DUBAIS, CHAIRMAN OF THE BOARD OF THE OIL COMPANIES INSTITUTE FOR MARINE POLLUTION COMPENSATION LIMITED ADVISES AS FOLLOWS

QUOTE YOU WILL APPRECIATE THAT CRISTAL IS A VOLUNTARY AGREEMENT AND ITS APPLICABILITY AND ITS INTERPRETATION WILL BE DECIDED IN ANY CASE BY THE INSTITUTE (STOP) HOWEVER ITS BASIC OBJECTIVE IS TO SUPPLEMENT TANKER LIABILITY (STOP) IF SOME OTHER SOURCE OF COMPENSATION CREATED BY LAW SUPPLEMENTS THAT TANKER LIABILITY THERE OBVIOUSLY IS NO AREA FOR CRISTAL TO OPERATE (STOP) OUR PREVIOUS ADVICE THAT NO PAYMENT WOULD BE MADE BY CRISTAL IS CONFIRMED AND WOULD REFER YOU PARTICULARLY TO ARTICLE IV (B) (STOP THIS ADVISE IS GIVEN BECAUSE BILL C—2 PROVIDES THAT CLAIMANTS HAVE RIGHT OF RECOVERY FROM SHIPOWNER AND CARGO OWNER UNDER SECTION 743 AND TO THE EXTENT THAT CLAIMS ARE NOT SATISFIED CLAIMANTS ARE ENTITLED TO RECOVER FROM MARITIME CLAIMS FUND UNDER SECTION 753 WITHOUT LIMIT (STOP) BLL C—2 HAVING GIVEN CLAIMANTS SUCH LEGAL RIGHTS CRISTAL BY ITS TERMS WILL NOT RESPOND (STOP) UNQUOTE

P.A. MEDCRAFT
CHAIRMAN, OIL COMPANIES INTERNATIONAL MARINE FORUM

TO BP OIL LIMITED MONTREAL 4 23.03.71

FROM BPTC LONDON

URGENT

FOR J LANGELIER FROM P A MEDCRAFT YOUR TELEX 22ND RECEIVED (STOP) WE CONFIRM THAT IF LIABILITY OF EITHER SHIPOWNER OR CARGO OWNER IS UNLIMITED UNDER SECTION 744 (4) (D) DUE TO ACTUAL FAULT OR PRIVITY THAN NO PAYMENT WILL BE MADE BY CRISTAL (STOP)

LETTER FOLLOWS CONTAINING TEXT OF STATEMENT GIVEN IN PREVIOUS TELEX AND CONFIRMING THIS TELEX

Published under authority of the Senate by the Queen's Printer for Canada

Available from Information Canada, Ottawa, Canada.

CA1 YC 17
183

THIRD SESSION—TWENTY-EIGHTH PARLIAMENT

1970-71

THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING SENATE COMMITTEE ON

TRANSPORT AND COMMUNICATIONS

The Honourable J. CAMPBELL HAIG, *Chairman*

No. 5

THURSDAY, MAY 27, 1971

LIBRARY
JUN 23 1971
UNIVERSITY

Complete Proceedings on Bill S-21,

intituled:

"An Act respecting Canadian Pacific Railway Company"

REPORT OF THE COMMITTEE

(Witnesses:—See Minutes of Proceedings)

23696—1

THE STANDING SENATE COMMITTEE ON TRANSPORT AND COMMUNICATIONS

The Honourable J. Campbell Haig, *Chairman*

The Honourable Senators:

Blois
Bourget
Burchill
Connolly (*Halifax-North*)
Denis
*Flynn
Fournier (*Madawaska-Restigouche*)
Haig
Hayden
Isnor
Kinley
Kinnear
Langlois
Macdonald (*Cape Breton*)
*Martin
McElman
McGrand
Michaud
Molson
Nichol
O'Leary
Petten
Rattenbury
Robichaud
Smith
Sparrow
Welch—(25).

**Ex officio members*

(Quorum 7)

Order of Reference

Extract from the Minutes of the Proceedings of the Senate, May 25th, 1971:

"Pursuant to the Order of the Day, the Honourable Senator Sparrow moved, seconded by the Honourable Senator Boucher, that the Bill S-21, intituled: "An Act respecting Canadian Pacific Railway Company", be read the second time.

After debate, and—
The question being put on the motion, it was—
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Sparrow moved, seconded by the Honourable Senator Boucher, that the Bill be referred the Standing Senate Committee on Transport and Communications.

The question being put on the motiin, it was—
Resolved in the affirmative."

Robert Fortier,
Clerk of the Senate.

23696—1½

Minutes of Proceedings

Thursday, May 27, 1971.
(5)

Pursuant to adjournment and notice the Standing Senate Committee on Transport and Communications met this day at 11:05 for the consideration of Bill S-21 intituled: *"An Act respecting Canadian Pacific Railway Company"*.

Present: The Honourable Senators Haig, (*Chairman*), Burchill, Denis, Flynn, Kinnear, McElman, McGrand, Michaud, Molson, Rattenbury, Smith and Sparrow—(12).

Also present but not of the Committee: The Honourable Senator Boucher.

In attendance: Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

On Motion of the Honourable Senator Molson, it was *Resolved* to print 800 copies in English and 300 copies in French of these Proceedings.

The following witnesses were heard:

CANADIAN PACIFIC RAILWAY COMPANY

Mr. Paul B. Tetro, Legal Counsel and Parliamentary Agent;

Mr. R. S. Allison, Vice President, Prairie Region;

Mr. J. F. Condon, Vice President and member of the Board of Directors of the Athabasca Forest Industries Limited;

The Honourable D. G. Steuart, Deputy Premier and Provincial Treasurer of the Government of Saskatchewan;

Mr. G. E. Boyhan, Chief Engineer, Athabasca Forest Industries Limited.

On motion of the Honourable Senator Rattenbury, it was

Resolved to report the said Bill without amendment.

At 12:05 p.m. the Committee adjourned to the call of the Chairman.

ATTEST:

Aline Pritchard,
Clerk of the Committee.

Report of the Committee

Thursday, May 27, 1971.

The Standing Senate Committee on Transport and Communications to which was referred Bill S-21, intituled: "An Act respecting Canadian Pacific Railway Company", has in obedience to the order of reference of May 25th, 1971, examined the said Bill and now reports the same without amendment.

Respectfully submitted.

J. Campbell Haig,
Chairman.

The Standing Senate Committee on Transport and Communications

Evidence

Ottawa, Thursday, May 27, 1971

The Standing Senate Committee on Transport and Communications, to which was referred Bill S-21, respecting Canadian Pacific Railway Company, met this day at 11 a.m. to give consideration to the bill.

Senator J. Campbell Haig (*Acting Chairman*) in the Chair.

The Chairman: Honourable senators, this morning we discuss Bill S-21, respecting the Canadian Pacific Railway Company. Mr. Paul Tetro, the Parliamentary Agent, will introduce the witnesses.

Mr. Paul Tetro, Parliamentary Agent: Thank you very much, Mr. Chairman. Honourable senators, there will be three witnesses whom we would like to present this morning, and I will introduce them to you now. On my right is Mr. Russell Allison, the Vice-President of the Prairie Region of the Canadian Pacific Railway Company; he is the chief company officer directly responsible for this proposed branch line. On his right is Mr. Joseph F. Condon, who is a member of the board of directors, and a Vice-President of Athabasca Forest Industries Ltd., the company which proposes to build a pulp mill in Northern Saskatchewan, which would be served by this branch line of the railway. On his right is the Honourable D. G. Steuart, who is a member of the board of directors of Athabasca Forest Industries Ltd., and the Deputy Premier and Provincial Treasurer of the Government of the Province of Saskatchewan.

Mr. Allison, in his opening remarks, will deal with matters pertaining to the construction of the proposed branch line of railway and its operation. Mr. Condon will deal with matters pertaining to the proposed mill complex and the marketing of its products. Mr. Steuart will deal with matters pertaining to the economic and sociological impact of the proposed mill, that will be constructed if the proposed branch line of railway can be built.

The bill that is before this committee is S-21. I believe, honourable senators, that it is in the normal form that many applications of this nature have taken in the past. You have had a most complete introduction to it by Senator Sparrow, at second reading. If it meets with your concurrence, Mr. Chairman and honourable senators, we would like to ask, in the order indicated, each of the three witnesses to make a short introductory statement. This will give you a broad picture of the proposed branch line of railway, the pulp mill complex that it is proposed to serve, and its effect upon particularly the Province of Saskatchewan but also Canada as a whole. Mr. Allison, please.

Mr. R. S. Allison, Vice President, Prairie Region, Canadian Pacific Railway Company: Mr. Chairman and honourable senators, this presentation covers the construction of 62 miles of branch line from the subdivision known as Meadow Lake Subdivision, 62 miles north to a complex proposed to be constructed, known as Athabasca Forest Industries Ltd. I believe you have a copy of this plan before you. There is a small inset here which shows you in red the 62 miles of branch line from Meadow Lake Subdivision at a place called Sergent. Sergent is 18 miles east of Meadow Lake and about 136 rail miles northwest of Prince Abert. For orientation purposes, that is about 100 miles north of North Battleford. Subject to the approval of Parliament at its current session, we will proceed with the construction of this line.

There are no particular problems in the construction and no undue difficulty. The line itself traverses relatively flat land, from Sergent to the mill complex, and for the 62 miles the line descends gradually northwards, the difference in the elevation bieng about 210 feet.

The ground is mostly sandy. There is some gravel, not much. For the first 12 miles, the line travels through slightly cleared land and some cultivation and beyond that is a little more rolling as we go northward with increasingly dense timber cover. There is a bit of muskeg, not too much, a maximum of about 10 feet in depth.

The rail line itself is of the order of a maximum of 1 per cent compensated. There are three bridges involved. One of them crosses the Chitek River about 1.2 miles north of Sergent. The approach there will be a 103 foot span with a timber flanking span on each side. Then at the Beaver River crossing about 19.3 miles north of Sergent, there will be two 103-foot steel spans, with a flanking timber span on either side. The third river is the Waterhen, at mileage 41.3, and it is a 100-foot steel span with two flanking timber spans.

The survey work and engineering work on the line is substantially complete and it is most important to get the construction of this line under way to take advantage of the favourable summer construction weather conditions.

As to the land, the right of way, for the 62 miles of railroad, 93 per cent of the right of way is owned by the Province of Saskatchewan and about 700 acres is involved. There is no problem regarding that. We have

an agreement with the Province of Saskatchewan covering the property. They have some ten leaseholders who occupy about 122 acres of this 700 and arrangements have been made with the leaseholders.

The remaining 7 per cent of the property required for the right of way is privately owned and at present is under option by Canadian Pacific Railway. There will be no expropriation of lands involved in order to acquire the right of way.

The cost for the 62 mile branch line is estimated at $6½ million. It is estimated that a work force of approximately 300 people will be employed in the construction of the line. The target date for completion of the line is June 30, 1972

It is estimated that when the mill reaches capacity there will be an inbound tonnage to the mill of approximately 200,000 tons a year. That will consist of chemicals such as saltcake and limestone, and there will also be some fuel oil. The total tonnage will be about 200,000 tons.

Outbound from the mill there is an estimated annual tonnage of 450,000 tons which will consist mainly of pulp. There will also be some tall oil and turpentine. In addition, there will be some miscellaneous traffic and the railway will be used to bring some of the construction materials in to the site.

Due to the geographical location of this mill in northern Saskatchewan, and the nature and the volume of the product produced, the distance to market and the climatic conditions, a railroad is the only economically feasible mode of transport to and from this site.

Mr. Tetro: Honourable senators, I would like to call upon Mr. Condon, please.

Mr. Joseph E. Condon, Vice President, Athabasca Forest Industries Ltd.: Mr. Chairman and honourable senators, the Athabasca Forest Industries Ltd. is a Saskatchewan corporation incorporated in Saskatchewan for the purpose of constructing and operating a pulp mill in the vicinity of the confluence of the Beaver and Doré rivers, in northern Saskatchewan, for the production of bleached Kraft pulp. The mill complex will be constructed at a total cost of $117.7 million, of which $10 million will be expended on effluent control.

The design and preliminary engineering work for the mill have been completed and we are ready to commence construction. The final signal will be the approval by Parliament of the application of Canadian Pacific Railway Company to construct the line from Meadow Lake to Doré Lake.

Construction is scheduled to be completed by late 1973, with the start up of the mill immediately thereafter. We are scheduled to reach full production within three years after the start-up.

Athabasca has reached agreement with the Department of Natural Resources of the Province of Saskatchewan for a management licence covering 23,300 square miles of land to supply the wood pulp fir the proposed mill. Athabasca will employ silviculture and harvesting methods to ensure a perpetual timber supply for all of the mill's requirements.

The world market for bleached kraft pulp is expanding at a satisfactory rate that will absorb the production capacity of this new mill. In fact, paper consumption which is today in terms of world consumption at 130 million tons per year is projected by the North American Pulp and Paper Association and the Scandinavian Pulp and Paper Association to expand to 280 million tons by 1985, which is more than double the present demand.

Now, this is a market pulp mill, and market pulp, specifically, is today at 9 million tons and is projected to expand to 15 million tons by 1975. That is an expansion of 820,000 tons a year, which will more than absorb the capacity of the Athabasca pulp mill.

Assuming a sales price of $172 per short ton and the rated capacity of 450,000 tons per year, annual sales will be approximately $77 million.

I should like to point out that all of these sales are to the United States and to world markets and therefore the sales will be a major contribution to a favourable Canadian balance of payments.

Athabasca has now concluded satisfactory arrangements with the Canadian Pacific Railway Company for construction of this line, subject, of course, to the approval of Parliament. Because of the long distances involved, because of the nature and volume of the product, because of the severe climatic conditions prevailing in northwestern Saskatchewan, we believe that railway transportation is the only economic and feasible means of transportation for incoming and outgoing products of this new mill. We are also convinced—and Mr. Steuart will address himself to this subject—that the new mill will have a major impact upon the economy of Saskatchewan. Thank you.

Hon. D. G. Steuart, Deputy Premier and Provincial Treasurer, Government of the Province of Saskatchewan): Mr. Chairman and honourable senators, to fully appreciate the significance of the Athabasca pulp mill project in northwestern Saskatchewan it is necessary to have an awareness of the region, its problems and its potential.

The major communities in this area are Meadow Lake with a population of 3,300, La Loche with a population of 1,250, Buffalo Narrows with a population of 1,200 and Ile A La Crosse with 1,150 residents. In addition, there are 550 people in Beauval and 540 people in Green Lake. Approximately 80 to 90 per cent of the people are of native ancestry. Without exception, the largest single source of income in these communities, and, indeed, throughout the whole area, is social aid. This is not a criticism of, nor a reflection on, the people of the northwest part of the province. They are, in fact, victims of circumstances, living in an area which is at this time devoid of job opportunities.

At various times in the past efforts have been made to resolve the problem by moving some of these people into

the more developed regions in the southern part of the province. This has met with only indifferent success since, for the most part, the Indians and Métis of the north are unhappy when they are removed from their familiar environment. They find difficulty in competing with white people for skilled jobs in the cities. They meet with a lack of acceptance and consequently they swell the ranks of the unemployed in the southern part of the province.

This is one of the major reasons why the government of Saskatchewan has exerted so much effort to bring a second pulp mill to Saskatchewan. We recognize the need to provide job opportunities for our disadvantaged citizens and we believe that it is desirable to provide those jobs in the area in which these people reside. We are not proposing the establishment of this mill as an alternative to existing opportunities for employment. The only alternative is wide-spread unemployment and continued dependence upon social aid.

The company is committed to hire, to a minimum of 20 per cent, persons of Indian and Métis extraction, and, in fact, will hire a much higher percentage than that. One of the prime difficulties encountered by these people is that they lack the training to obtain employment in the skilled trades. To overcome this problem, the government, the company and the unions have agreed to initiate an apprenticeship program so that the people of the area may develop the necessary skills through formal training and on-the-job work training and experience.

In addition to the jobs which will be provided during the construction of the mill, many more jobs will be provided to construct the highway to the mill site and in building the railway now under discussion. When the mill comes into operation, full-time employment will be provided both in the mill and in the woods operation. The company has indicated that a minimum of 480 persons will be provided with work directly in the mill itself. We believe that this is a low estimate and that actual employment figures may run as high as 550. About another 700 persons will be given employment in the woods operation, and there will be 500 to 600 jobs developed in the townsite. In total we think there will be a minimum of 1,500 to 1,800 jobs generated directly in the mill and ancilliary services and then there will be the added jobs that come from other services that come into the area to back up and supply the mill.

The economic impact of the mill will not, however, be confined to the immediate area in which it is located. It is estimated that the Athabasca mill will spend more than $45 million annually in Saskatchewan.

It is estimated also that 75 per cent to 80 per cent of the equipment for the pulp mill will be purchased in Canada and that of the total capital costs over the next 30 months Athabasca will spend $105 million in Saskatchewan and the other provinces of Canada.

One major factor which must not be overlooked is the importance of this project in assisting in the diversification of the economy of our province. We are painfully aware of the problems which are inherent when our economy is dependent upon wheat crops, world markets and world prices.

One question which will inevitably be asked is, "What impact will the new pulp mill have on the tourist industry in the area?"

As a matter of fact, the tourist industry in that area at the present time provides employment only in nine camps for 60 people on a part-time basis. One of the reasons why there is such limited development in this tourist-recreation industry is that there has been a lack of roads to provide access to the areas.

The agreements call for payment of an additional fee for fire protection, a factor which will be of immeasurable benefit to the tourist industry as well as for the protection of the forest resources in this area.

We believe that the establishment of this pulp mill will prove to be a boon to the tourist industry and that areas previously inaccessible will be opened up to provide recreational facilities for the people of this province and other parts of Canada as well.

Another area of great concern is the impact of the proposed mill upon the environment. Let me make the position of the government of Saskatchewan abundantly clear. We are not unaware of the tragic loss which would ensue if the pulp mill were allowed to pollute our northern water. Indeed, we are probably more aware of this than any other group in the country. That is why we have commissioned not just one but two major consulting firms to advise us concerning the precautions that must be taken to protect these waters. On top of that we have the staff of the Saskatchewan Water Resources Commission presently examining our proposal in every detail. Incidentally, this independent body is headed up by a judge. We have also established the Saskatchewan Clean Environment Authority to exercise control over each and every potential contributor to pollution.

On top of that we have the staff of the Saskatchewan Water Resources Commission and they are examining our proposal in every detail. This, incidentally, is an inependent body headed up by a judge.

We have also established the Saskatchewan Clean Environment Authority to exercise control over each and every potential contributor to pollution. In fact Saskatchewan pollution control requirements are extremely high and they must be met by this new mill.

I can assure you that unless and until we are satisfied that adequate precautions have been taken to protect our environment, our lakes and our rivers, and until the federal Department of Fisheries is similarly satisfied, the mill will not be allowed to operate. To give you one example, of the $117 million capital cost, we have allocated $10 million for pollution control. We are also taking, as Mr. Condon pointed out, adequate measures to assure the reforestation and the regeneration of the forests in that area.

In summary, the Government of Saskatchewan is vitally interested in this project because of the training and

employment opportunities which it will provide to the disadvantaged people of northern Saskatchewan, because of the economic and financial benefits which will accrue to this province and to the whole of Canada, and because it will facilitate diversification of our economy. The construction of this branchline is an integral part of the whole project and is essential to the feasibility of the project. It is of tremendous importance that an early decision be made since major construction of the mill is dependent upon railway access.

Thank you very much.

Mr. Tetro: Mr. Chairman and honourable senators, this concludes the statements by all of our witnesses and now we are open to questions from you.

Senator Molson: Mr. Chairman, my knowledge of geography to the northwest of this area shown is vague. The watershed from Beaver River and the north there goes ultimately where?

Mr. Condon: To the Churchill River system and eventually into Hudson Bay.

Senator Flynn: Will the mill produce only pulp or will it also produce newsprint?

Mr. Condon: The mill will produce only pulp at this stage.

Senator Flynn: Is it contemplated that it will produce newsprint later?

Mr. Condon: No, a newsprint mill is of a completely different design to that of a pulp mill. It is possible that at a later stage it could be converted to a paper mill but it would not be converted to a newsprint mill.

Senator Flynn: You are optimistic about the market for pulp at this time?

Mr. Condon: Yes, we are optimistic about the turn in the market after 1972. The pulp and paper industry, as you know, is a highly cyclical one which a year ago was at its peak and presently is in a valley. According to projections made by the North American Pulp and Paper Association and the Scandinavian Association and such institutions as the Stanford Research Institute, those projections show that by 1972 and certainly by 1973 when this mill will come on stream, the market will again be strong both in demand and in price structure.

Senator Flynn: Do you foresee that you will sell that pulp or most of it to the central United States?

Mr. Condon: A large proportion, perhaps 60 per cent will be sold in the United States market and 40 per cent will be sold in the European market and in Japan.

Senator Burchill: What you have said is good news to me because I come from a province where our kraft mills are having a terrible time. They cannot sell their produce, and the men are out of employment and they are very unhappy.

Mr. Condon: You are quite right.

Senator Burchill: I know how important this mill is for the Province of Saskatchewan. What I am concerned about is the marketing of your product.

Mr. Condon: You are quite right. There are a number of mills in North America today that are suffering because of the market, because of the sales price on pulp and paper products. There are two other factors that we feel are to our advantage. First, of the older mills, obsolete sulphite mills in particular, are being closed because of the ecology problem. Secondly, Scandinavian mills are being integrated. So we feel quite confident that by 1972-73 the demand for these products will be so strong that we will have no problem in marketing the pulp.

Senator Burchill: What is the daily capacity of this mill?

Mr. Condon: The daily rated capacity is 1,400 tons per day.

Senator Burchill: What will you use—spruce?

Mr. Condon: We are using spruce, jack pine, and also some hardwoods.

Senator Burchill: You would need about 1,500 cords a day?

Mr. Condon: Yes, sir.

Senator Burchill: You have plenty of wood.

Mr. Condon: We have had a number of studies carried out by the fact-finding commission appointed by the Government of Saskatchewan and other consultants, which indicate that there is sufficient wood in the management licence area to supply all of the wood requirements in perpetuity for this mill.

Senator Burchill: What is your estimate of the cost of that wood for the mill?

Mr. Condon: Our estimate of the cost delivered to the mill is approximately $23 a cord.

Senator Rattenbury: I think Mr. Condon quoted a price of $172 per ton. Is that the delivered price?

Mr. Condon: Yes, that is the delivered price, including freight.

Senator Rattenbury: Delivered where?

Mr. Condon: That price is based upon prices delivered to the US paper customers, which in fact we had been receiving for all of our premium grade pulp from the Prince Albert pulp mill. We have these statistics from our Prince Albert sales on which we base the costs involved in this mill and that evidence is as good as we can provide.

Senator Rattenbury: What is the name of the other mill?

Mr. Condon: Prince Albert mill.

Senator Rattenbury: Is that a bleach pulp mill?

Mr. Condon: Yes, the same kind of mill as this one. It will use the same wood and will produce the same quality pulp.

Senator Rattenbury: Did I interpret your remarks correctly when you said that mechanical pulp is on the way out and that there is an ever increasing demand for bleach pulp?

Mr. Condon: I was not referring specifically to mechanical pulp. That is a process rather than a description of the type of pulp. The manufacturing process that I referred to is the sulphite process versus the kraft process. Almost all modern pulp mills, because of the economics involved, use the new kraft system, which is related to the recovery of chemicals, which permits more economic production.

Senator McElman: Did I understand you to say that the management licence took in 23,000 square miles?

Hon. Mr. Steuart: Yes, 23,000 square miles. The Prince Albert pulp mill, for example, has 18,000 square miles. One of the problems up there is that our trees to do not grow as close together as those in the rest of Canada. We need to set aside a very large area. Inside this area there are some provincial parks and many lakes. It is a bit of an exaggeration to say there will be 23,000 square miles. That is the total area set aside. That is what is necessary to ensure production at this mill in perpetuity.

This will be the last pulp mill that we can have. We have one in the Prince Albert area which takes the central northern region of Saskatchewan. This one is in the western region. We have a lumber industry and a chip-board industry on the eastern side. This will be the last pulp mill.

Senator McElman: What is the estimated annual productive growth of this area in perpetuity?

Hon. Mr. Steuart: About 1,250,000 cords, both soft and hardwoods combined.

Senator McElman: Do you feel that this forest is capable of producing this amount in perpetuity, or does this include a reforestation program?

Hon. Mr. Steuart: Both. We think it can produce this in perpetuity. We have about 25 per cent back-up. We think we are on the safe side with about 25 per cent. This will include natural regeneration and reforestation.

Senator McElman: The agreement includes provision for reforestation?

Hon. Mr. Steuart: Yes. We will charge so much a cord and the Government will carry out the reforestation.

Senator Flynn: Does this project, the mill, qualify for some government subvention, provincial or federal?

Hon. Mr. Steuart: Yes. The area has been designated as a special area by D.R.E.E. and we have an agreement from the federal Government that, providing we do all the things we are supposed to do, especially in the sphere of environment and pollution control, we will qualify for the maximum grant. The provincial government is involved to the extent that we are putting in some of the equity capital and we are guaranteeing the senior financing of the long-term loan. As a result we will be 30 per cent equity shareholders in this mill.

Senator Flynn: I thought that under federal legislation pulp and paper mills did not qualify.

Hon. Mr. Steuart: They normally do not, but this is a specially designated area because of the serious unemployment affecting local people.

Senator Rattenbury: In view of what is happening in other parts of Canada regarding provincial parks, and the cutting of trees in provincial parks, will cutting be allowed in this area that you have referred to?

Hon. Mr. Steuart: We do a little cutting in our provincial parks. Our Department of Natural Resources go into the provincial parks and cut on a very selective basis. They do not quite agree with their federal counterparts. They think that the forest is helped by this. The cutting will be minimal and in the best interests of the parkland itself. In effect, there will be very little cutting done and it will be seriously controlled by the Parks Department and the government.

Senator Rattenbury: I agree with that policy.

Senator Sparrow: Regarding the rail line itself, is it anticipated that it will serve in the future any other natural resources industries further to the north?

Mr. Condon: If this line could be extended readily northward to serve any developments that might take place north of the pulp mill site?

Senator Sparrow: Yes. I am wondering if there is further natural resources in the area that may be developed?

Hon. Mr. Steuart: A company called Motka, which is basically a French corporation, has uranium development approximately 100 miles north of there, about 30 miles south of Lake Athabaska, and about 30 or 40 miles from the Alberta border. They have spent a considerable amount of money on developing this uranium mine. We have now agreed to put in a winter road. They have told us that they are not ready to go ahead with the mine, smelter or reducing plant yet, but I met with the Canadian president yesterday, who told me that he was very optimistic. We have great hopes for this project. There is a mineralized area there. We think that the railroad, coming this far north, will tend to open up the great mineralized area that lies north of there. So we think this will just be the beginning of a second stage, which will open up other natural resources north of that area.

Senator Flynn: How far is that from Uranium City or Gunnar?

Hon. Mr. Steuart: I would think 250 or 300 miles.

Senator Flynn: To the end of the line?

Hon. Mr. Steuart: No, the end of that line would be 200 miles, maybe a little more.

Senator Sparrow: Mr. Steuart, you suggest that approximately 20 per cent of the employees would be of Indian ancestry. How many unemployed of Indian ancestry background would there be now in the area from which you can draw? You gave us the population.

Hon. Mr. Steuart: About 95 per cent are unemployed.

Senator Sparrow: In numbers?

Hon. Mr. Steuart: About 6,000 altogether, of which I suppose a little over 3,000 would be adults. Ninety or 95 per cent are unemployed.

There is some seasonal work in fishing and trapping and they occasionally go out to sugar-beat fields in Alberta. However, the major source of income, unfortunately, is social welfare.

Senator Kinnear: You are allowing $10 million to control the effluent. By what percentage would that amount be effective? Would you also describe the industry in itself and how much effluent escapes in your attempt to control it?

Mr. Condon: In answer to your first question, this represents roughly $117 million, 10 per cent of the total equipment, building and engineering costs of the project.

In answer to your second question perhaps I could backtrack to say that obviously the pulp and paper and chemical industries have been major offenders with respect to air and water pollution in the past. Great strides have been made in the past few years technologically and also as a result of requirements of governments to meet higher regulations for purification of both water and air.

As an indication, this will be the third pulp mill we have built in Canada and we have increased the amount that we spend on pollution control several times. We have in each subsequent mill more than doubled. In fact more than triple the amount of effluent control expenditures will be made in this mill to meet the regulations of the Saskatchewan Water Commission and the new federal regulations. There is no question that effluent control is such an issue today in terms of improving the quality of life that it is here to stay. It will be improved every year, both from the point of view of technological advancement and the requirements of governments to improve.

Senator Kinnear: I understand that you have pollution trouble in Prince Albert. Are you overcoming that in the new plant?

Mr. Condon: We have had trouble in Prince Albert. In common with all pulp mills in North America, we are today installing a secondary treatment system in the Prince Albert mill which will immensely improve the pollution control. We have already in the past several months, in co-operation or agreement with the Government of Saskatchewan, installed aeration treatment. The secondary treatment installation will be completed by October of this year and will immensely improve the pollution control of the mill.

Pollution control in that sense is a function of dollars. The technology exists, but it is a question of the percentage of improvement one is willing to finance. We will certainly meet all the regulations of the Saskatchewan Water Commission and the federal regulations in this new mill.

Senator McElman: What steps are you taking in your St. Ann Nackawic plant, which also has an area of effluent problems?

Mr. Condon: Our chief engineer is with me and can address himself to this in greater detail than I. The St. Ann Nackawic plant has a separate water treatment system. It has a fairly advanced air treatment system. However, since the St. Ann mill was constructed there have been further technological improvements. Just to give you an example, the normal mill built five years ago would emit 22 pounds per ton of totally reduced sulphur. This mill will put out less than one and one-half pounds per ton, so that it will not be noticeable. In terms of air pollution control, tremendous advances have been made and I can almost say conclusively that there will be no air detection of pollution.

Hon. Mr. Steuart: The question was raised with regard to pollution at Prince Albert. Being the member from Prince Albert, I am a great expert. We produce lousy water and politicians. However, we have had a real problem with the North Saskatchewan River. When the mill was built we insisted on only a primary sewage disposal. At that time we had no other regulations in regard to the City of Prince Albert and the City of Saskatoon, which had no sewage disposal. They never had and they just dumped their raw sewage in the Saskatchewan River. We have changed that and they are both building primary sewage disposal systems. We have changed the allowable quality of the effluent from 40,000 pounds b.o.d. at the mill to 25,000 pounds, which our experts say the Saskatchewan River can handle. That is the stage which will take place this year. The next stage will be when we insist that the cities install secondary systems to ensure a b.o.d. content even below that.

We have our problems, but we are taking action. The mill is being very responsive in this regard. We are improving and setting much higher standards for the mill at Athabasca.

Senator McElman: I do not believe I yet have an answer to my question as to your current plans for the reduction of the air effluent at St. Ann Nackawic.

Mr. Tetro: We have here Mr. George E. Boyhan, the chief engineer of Athabasca, who will be responsible for

the construction of the proposed pulp mill complex at Dore Lake and is qualified to speak on the point raised by the senator.

Mr. George E. Boyhan, Chief Engineer, Athabasca Forest Industries Ltd.: At St. Ann Nackawic this technology on atmospheric emission control in our industry has only come to the fore in the last two or three years. In fact, there are today only three mills which would be considered to have very sophisticated equipment and they have come on stream in the last year. This technology is coming along all the time.

As Mr. Condon says, as far as emission rates are concerned, mills that are about five years old would have emissions of about 22 pounds a ton. This new mill at Athabasca will be down to a level of about 1½ pounds. With all these mills we have got, by the time the design is completed we will have a lead-time of about three or four years, so we were talking in 1967 and saying we could not incorporate all of the equipment that would have to go into the Athabasca mill. For example, for the destructive combustion of non-condensible gases there is highly sophisticated scrubbing equipment with 99 per cent efficiency precipitate. All of this would be incorporated in the Athabaska plant.

With regard to the St. Ann plant, we are looking at the problem. Hardwood poses a particularly difficult problem from the standpoint of emission, and particularly the smell from ethyl mercaptan and dimethyl sulphide. We know we have to put in additional scrubbers, and just how and what type to put in is currently under study. We know we have a problem with the hardwood, but it is currently under study, and we know we have to get that level down. That plant has only actually been in operation for about seven months at full operation, so we are scarcely even stabilized yet.

Senator McElman: But it is definitely in your planning procedures.

Mr. Boyhan: Very definitely.

Senator Denis: Who owns the Athabasca Forest Industries Ltd?

Hon. Mr. Steuart: It is owned 70 per cent by Parsons and Whittemore Inc. of New York, and 30 per cent by the government of Saskatchewan.

Senator Denis: I see this railroad is built around Beaver River. Is this river wide enough to have the wood float down it?

Hon. Mr. Steuart: We will truck the wood. We will not use the river for the delivery of wood.

Senator Denis: Is that impossible? Is it not wide enough?

Hon. Mr. Steuart: The most serious problem is the freezing over of the river.

Senator Denis: But during the summer it is not frozen.

Hon. Mr. Steuart: We enjoy a very brief summer in that part of Saskatchewan. We will truck the wood by road.

Senator Smith: It strikes me that the consumptive power of a mill of this size is a very large item. Where is that power generated?

Mr. Condon: The mill has its own power generation system. We will purchase some auxiliary power from the Saskatchewan Power Corporation, as we do in the Prince Albert Pulp Company, but the mill will have its own power plant.

Senator Smith: What is the source of power there at the mill?

Hon. Mr. Steuart: The crown-owned power corporation will supply the natural gas. The mill will generate most of its own power. The Saskatchewan Power Corporation will bring power to the townsite and supply standby power. We have two sources of power: the Gardiner Dam at Diefenbaker Lake, working in conjunction to do some of our power; and we have a hydro power plant at Nipawin. Most of our power is still from coal generation brought up from the south of the province from Estevan. These are basically the sources of our power.

Senator Smith: When you do get started, as I understand it you are quite serious in estimating that in future you could find a market in Europe to supplement the Japanese market and the market south of the border. When you have to fill that market in Europe, what will be your shipping route? Will you ship to the west coast and through the Panama Canal?

Mr. Condon: We have been discussing this with the C.P. Rail marketing people over the past several months for water export rates and the routes that would be employed. We could of course use Vancouver, but also Thunder Bay, obviously depending upon the whole rate structure.

Senator Smith: I was wondering whether you had reached the point where you had made a firm decision about the matter. This is a long haul in any case, and very expensive.

Mr. Condon: It is a very long haul, and obviously depends on the whole rate structure.

Senator Smith: It is very expensive, no doubt, whatever you do with it.

Senator Sparrow: Is it true that the present mill and the proposed mill in Saskatchewan produce the best bleached pulp in the world? If so, why is it?

Hon. Mr. Steuart: Next to New Brunswick! We produce a very high quality pulp. We have many serious problems of locating a pulp mill in Saskatchewan, such as the distance from the market which Senator Smith mentioned. One of the advantages is that our trees take so long to grow that they develop a very tough fibre and

produce a very high grade pulp, so we do have a very high grade of softwood pulp, and have been able in the Prince Albert pulp mill to obtain a ready market for it at a premium price. This basically is the reason, the type of wood that grows in the area.

Senator McGrand: When the pollutants are recovered from the air and water, how are they disposed of to make sure they will give no further problems?

Mr. Boyhan: Ultimately what we have to worry about is what we call the non-condensibles. What is condensible will be washed down in a scrubbing system as a liquid and re-cycled into our liquor recovery system. In the case of the non-condensibles, they will be destructively burned off in a lime kiln. We are very fortunate, because the lime kiln has basically lime as a scrubbing medium, which is used currently in probably the most advanced system of scrubbing sulphur dioxide in power plants. By destructively burning it off in our kilns we will in fact scrub out most of the SO_2, which would go to the atmosphere, and that too will come back into our liquor cycle. That is not so simple, because what happens is that obviously we are recovering so much sulphur that our sulphidity levels get too high for us, so instead of making up with salt cake—which the Saskatchewan people like to sell us, because they are the greatest suppliers of salt cake in the world—we have to supplant this with what we call caustic soda.

With regard to liquid effluent, we have periodic clean-ups of the sedimentation pools perhaps once or twice a year. We will tend to use this material for building up the dykes around the pools themselves, or use it to back-fill low depression areas, of which we have many in that muskeg country.

Senator McGrand: It does not get back into the soil?

Mr. Boyhan: No, it does not.

Senator Kinnear: Are you sure it does not?

Mr. Boyhan: It definitely does not. When we excavate this material we do it with a portable dredge. It comes out in a semi-liquid form, and we so set it up that the liquid drains right back into our sedimentation pool.

Senator Kinnear: Do any of the gases that there may be in the air kill the vegetation?

Mr. Boyhan: Not at the level we are talking about. Let me give you an idea in terms of concentration instead of talking in terms of pounds. The more recent mills will put out an emission level of about 600 to 800 parts per million. We will be down to levels of around one to 10 parts per million under normal careful operations. We normally figure from the point of emission to ground level a dilution of about 1,000 to one, so we are down to levels that may be parts per billion. It is true that the nature of the emission we have, which is hydrogen sulphide, and not ethyl mercaptan, is a type of gas which can be picked up very noticeably by smell, but at this dilution level it cannot be smelled any more. There will definitely be no disadvantage to the foliage in the area.

Senator Kinnear: I hope that is true. I come from an area where there are a great many chemical plants and there is a great deal of difficulty in dealing with this problem.

Mr. Steuart: We think we have done that. I wish you had been able to visit the plant in Halsey, Oregon, which I think is a classic example of what can be done in our industry, and is being done.

Senator McElman: Are there any freehold lands up in that area that are tributary to this?

Mr. Steuart: No, it is all crown lands.

Senator McElman: and there are no reservations that are tributary to this?

Mr. Steuart: No, not tributary to this area.

Senator McElman: Then as far as wood supply is concerned, for pulp, it is totally a crown land supply to the mill?

Mr. Steuart: Yes, totally crown land.

Senator Smith: Mr. Chairman, I was delayed a few minutes. I wonder whether our law clerk, Mr. Hopkins, has been asked for his opinion?

The Acting Chairman: Mr. Tetro will read a paragraph of the letter.

Mr. Tetro: Mr. Chairman, we have consulted with the Department of Transport and they have reviewed the provisions of the proposed bill that is before you. They have advised that there are no objections, as far as the Department of Transport is concerned, to the proposed bill. There is a letter on file addressed to the Director of Committees of the Senate, to this effect.

Senator Smith: Mr. Chairman, that was not exactly my question. My question is whether the bill is in the usual legal form for branch lines as in the case of similar legislation which we have been accustomed to considering.

Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel: I so certify.

Senator Smith: Thank you. I asked particularly, because somebody should make that statement.

The Acting Chairman: Is it agreed that I report the bill without amendment?

Hon. Senators: Agreed.

The committee adjourned.

Published under authority of the Senate by the Queen's Printer for Canada

Available from Information Canada, Ottawa, Canada.

CA1 YC M
-T63

THIRD SESSION—TWENTY-EIGHTH PARLIAMENT

1970-71

THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING SENATE COMMITTEE ON

TRANSPORT AND COMMUNICATIONS

The Honourable J. CAMPBELL HAIG, *Chairman*

No. 6

THURSDAY, JUNE 17, 1971

LIBRARY
JUL 12 1971
UNIVERSITY OF TORONTO

Complete Proceedings on Bill S-14,

intituled:

"An Act respecting the construction of an international highway bridge between Fort Frances, Ontario and International Falls, Minnesota"

REPORT OF THE COMMITTEE

(Witnesses:—See Minutes of Proceedings)

23698—1

STANDING SENATE COMMITTEE ON
TRANSPORT AND COMMUNICATIONS

The Honourable J. Campbell Haig, *Chairman*

The Honourable Senators:

Argue
Blois
Bourget
Burchill
Connolly
(*Halifax-North*)
Denis
*Flynn
Fournier
(*Madawaska-Restigouche*)
Haig
Hayden
Isnor
Kinley
Kinnear
Langlois
Macdonald
(*Cape Breton*)
*Martin
McElman
McGrand
Michaud
Molson
Nichol
O'Leary
Petten
Prowse
Rattenbury
Robichaud
Smith
Sparrow
Welch—(27).

**Ex officio member*

(Quorum 7)

Order of Reference

Extract from the Minutes of the Proceedings of the Senate, April 27th, 1971:

Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Benidickson, P.C., seconded by the Honourable Senator Paterson, for the second reading of the Bill S-14, intituled: "An Act respecting the construction of an international highway bridge between Fort Frances, Ontario and International Falls, Minnesota".

After debate, and—
The question being put on the motion, it was—
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Benidickson, P.C., moved, seconded by the Honourable Senator Inman, that the Bill be referred to the Standing Senate Committee on Transport and Communications.

After debate, and—
The question being put on the motion, it was—
Resolved in the affirmative.

Robert Fortier
Clerk of the Senate.

23698—1½

Minutes of Proceedings

Thursday, June 17, 1971.

(6)

Pursuant to adjournment and notice the Standing Senate Committee on Transport and Communications met this day at 11:00 a.m. for the consideration of Bill S-14, intituled: "An Act respecting the construction of an international highway bridge between Fort Frances, Ontario and International Falls, Minnesota".

Present: The Honourable Senators Haig, (*Chairman*), Argue, Blois, Burchill, Flynn, Kinnear, Langlois, McGrand, Prowse, Rattenbury, Robichaud and Smith.—(12).

Also present but not of the Committee: The Honourable Senator Benidickson.

In attendance: Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel; Mr. Pierre Godbout, Assistant Law Clerk and Parliamentary Counsel.

On Motion of the Honourable Senator Robichaud, it was *Resolved* to print 800 copies in English and 300 copies in French of these Proceedings.

The following witnesses were heard:

Mr. John Reid, Member of Parliament for Kenora-Rainy River;

Mr. J. W. Ryan, Director, Legislation Section, Department of Justice;

Mr. M. Dolgin, U.S.A. Division, Department of External Affairs;

It was agreed to print as an Appendix to these Proceedings correspondence exchanged between the "International Bridge Committee" and the "State of Minnesota, Department of Highways" relating to Bill S-14.

After discussion and upon Motion it was *Resolved* to report the said Bill without amendment.

At 11:25 a.m. the Committee proceeded to the next Order of Business.

ATTEST:

Aline Pritchard
Clerk of the Committee.

Report of the Committee

Thursday, June 17th, 1971.

The Standing Senate Committee on Transport and Communications to which was referred Bill S-14, intituled: "An Act respecting the construction of an international highway bridge between Fort Frances, Ontario and International Falls, Minnesota", has in obedience to the order of reference of April 27th, 1971, examined the said Bill and now reports the same without amendment.

Respectfully submitted.

J. Campbell Haig,
Chairman.

The Standing Senate Committee on Transport and Communications

Evidence

Ottawa, Thursday, June 17, 1971.

The Standing Senate Committee on Transport and Communications, to which was referred Bill S-14, respecting the construction of an international highway bridge between Fort Frances, Ontario and International Falls, Minnesota, met this day at 11 a.m. to give consideration to the bill.

Senator J. Campbel Haig (*Chairman*) in the Chair.

The Chairman: Honourable senators, we have as witnesses today: Mr. John Reid, Member of Parliament for Kenora-Rainy River, the constituency of which Fort Frances is a part; Mr. J. W. Ryan, Director, Legislation Section, Department of Justice; and Mr. M. Dolgin, U.S.A. Division, Department of External Affairs.

Senator Benidickson sponsored this bill in the Senate. Do you wish to make a statement, Senator Benidickson?

Senator Benidickson: Mr. Chairman, when the bill was introduced I explained that this is a project of long standing. This bill proposes the construction of a bridge to supplement one that is very old, which was constructed by a private paper company, I think in 1903. Because the company has a mill on either side of the river, the bridge is also used for transporting its products to and fro by railway. With the increase in automobile traffic there are often great hold-ups.

Since the introduction of the bill several weeks ago, which was well advertised in the local press and in northwestern Ontario generally, I personally—and Mr. Reid will probably testify as to this too—have not received a letter from the company that owns the old bridge, or from anyone, protesting proceeding with this bill. Because it is an international river, this project requires authorization from the federal Parliament. Plans are not completed; a site has not been decided upon, but we are at least showing to the Americans that we approve of their going ahead with construction of the bridge. It will be a toll bridge. Almost all the funds will be raised in the United States; it will not cost our federal Government anything.

After we discuss the bill itself, I shall ask the indulgence of the committee to speak for a few minutes on a federal policy we have under which, if there is a toll bridge, we require the bridge authority to pay for the accommodation that we require for our own customs and immigration purposes. As it is a non-profit, private venture, I regard this as rather silly.

We had the same sort of discussion in the Standing Senate Committee on Banking, Trade and Commerce on December 18 in connection with a bill that Senator Kinnear presented, an amendment to the Buffalo and Fort Erie Public Bridge Company Act. When I raised this point before that committee, it was indicated that they agreed with my protest and that they thought copies of the minutes of that meeting should be sent to the Department of Manpower and Immigration and to the Customs authorities, to indicate our sentiment that it was rather ridiculous.

In connection with this bridge, on that point, for perhaps a year and a half the State of Minnesota, which is going to be responsible for the financing of this bridge, I say rather naturally balked on this one point. They said, "Heck, we are putting up the bridge, but we don't see any reason why we should have to pay the cost of the space that will be required on the Canadian side of the bridge for the customs and immigration officers." It almost killed the project, and it may kill other such projects if this federal policy continues.

Since I introduced the bill in the house, as I say, I have had no letters of protest from the company or from individuals. However, there has been in existence for several years an International Bridge Committee, representing citizens and the municipalities of International Falls, Minnesota, on the American side, and Fort Frances, Ontario, on our side. This committee has struggled for some time with this matter. My file goes way back before Mr. Reid succeeded me as Member of Parliament. There have been legal difficulties, which Mr. Ryan will explain, in connection with the amending bill that is before us, but this committee still functions.

I did not have time to distribute copies, but just yesterday I received from the Chairman, Canadian Section, a letter saying:

> Referring to our recent correspondence, enclosed is a letter from the Minnesota Highways Department confirming that Governor Wendell Anderson has signed thir bridge legislation into law.
>
> Canada has on several occasions been accused of "dragging its feet", and it is hoped our federal enabling legislation can now go through without further delay.

Perhaps I should file this letter.

Attached to that letter was a letter from the Department of Highways, the State of Minnesota, dated June 9, 1971. It is addressed to Mr. Tibbetts, the Chairman of the Canadian Section of the International Bridge Committee and reads as follows:

Dear Mr. Tibbetts:

On June 3, 1971, Governor Anderson signed Chapter 678, which permits creation of a joint international authority to construct and operate bridges over the waters between this State and Canada.

We hope that your Government will take action soon on its companion legislation and that our Congress will do likewise.

The Chairman: Does Senator Benidickson have authority to file these letters?

Hon. Senators: Agreed.

Senator Smith: Mr. Chairman, will they form an appendix to today's proceedings?

The Chairman: That is correct.

(For text of letters, see Appendix p. 6:11)

Mr. Reid, do you wish to make a statement?

Mr. John M. Reid, M.P.: No, Mr. Chairman, but I would be delighted to answer any questions that the honourable senators may wish to put in the course of their discussion on the bill.

The Chairman: Thank you.

Mr. Ryan, do you wish to make a statement?

Mr. J. W. Ryan, Director, Legislation Section, Department of Justice: No, Mr. Chairman, I have no comments to make, but I too will be available for any questions.

Senator Benidickson: I am not a member of this committee, Mr. Chairman, but could I ask Mr. Ryan to explain to the committee what will happen to the ownership of the bridge under the terms of the bill after the capital cost has been paid? Has that been part of your legal negotiations with Washington?

Mr. Ryan: Well, there is a long story in connection with reversion of international bridges that have heretofore been built, Mr. Chairman. This bill avoids that difficulty. I will try to explain what the original difficulty was.

These companies were usually set up under authority of American and Canadian reciprocal legislation. They tended to be joint stock companies or ordinary capital companies. They raised funds by way of bond issues to construct a bridge and then levied tolls to repay the capital cost, and at the end of the period the bridge reverted, half to the United States side and half to the Canadian side, and there was nobody to operate the bridge thereafter. This occurred most recently in the case of the Blue Water Bridge. It re-vested in the Canadian and American authorities, and there was nobody very anxious to carry it on, so we had to come to Parliament to establish a bridge authority which would be able to operate and maintain the bridge, and levy tolls.

This bill that you have before you avoids that difficulty by setting up an international bridge authority at the very outset. This is a joint authority, but if the American legislative bodies and authorities do not wish to be party to this international authority it becomes a purely Canadian authority which controls only that half of the bridge which is within Canadian jurisdiction. However, if the reciprocal legislation and authority in the United States permits American participation it then becomes a fully joint authority operated for the benefit of both sides.

The Chairman: After the costs have been paid?

Mr. Ryan: No, even before the costs have been paid. However, if there is no participation at the outset they can assign the Canadian rights to the American party who constructed the bridge and then, of course, there is the authority available in Canada, after the construction costs are paid off, to receive the bridge back. So the difficulty that we had with the Blue Water bridge is avoided by this bill.

Senator Rattenbury: Mr. Chairman, does the International Joint Commission enter into the picture?

Mr. Ryan: It has not entered into the picture at all, Mr. Chairman.

Senator Rattenbury: Is there any forecast of the cost of the bridge and the revenue?

Mr. Reid: Yes, I believe I can read you some information on that. It depends on the site chosen for the bridge. There are three sites which are now being discussed. If it is in the west end of Fort Frances it will cost approximately $4.4 million in United States funds. If it is in the east end of Fort Frances it will cost $U.S. 4.7 million. If it is in the downtown central site the cost will then be $U.S. 8.6 million.

Senator Benidickson: Because a lot of expropriation of existing buildings would be required.

Mr. Reid: To pay off the cost on the west end site, tolls would run at approximately 50 cents per car; in the east end site 55 cents per car; and in the central downtown site 85 cents per car—these figures being, of course, in U.S. funds. They are also based on a 30-year bond issue at 6½ per cent in 1971 U.S. dollars.

Senator Rattenbury: Tax free bonds?

Mr. Reid: Yes, tax free bonds.

Senator Rattenbury: I notice you did not give me the anticipated usage of the bridge.

Mr. Reid: I can give you the traffic figures for 1970.

Senator Benidickson: I put those on *Hansard* in April.

Mr. Reid: I will just repeat them. In 1970 the bridge was used by 1,046,547 persons, which includes 77,262 pedestrians. It was used by 320,845 cars, 6,576 trucks and 946 busses. The total rate of increase over the last ten years has been 50 per cent, which works out at an increase of approximately 5 to 6 per cent per year.

Senator Rattenbury: Have you a projected payout?

Mr. Reid: The payout has been projected on the basis of the tolls on a per car basis. At the present time there

are a number of ways in which you can pay your way over the bridge. About 40 per cent of the traffic would be classified as non-local traffic—that is those people who do not come from within the municipalities of Fort Frances and International Falls. Those non-local travellers pay $1 per car at the present time, while locals are allowed to buy books of tickets which reduce the cost to about 25 cents per car. For pedestrians there is no charge.

Senator Burchill: It is a private effort, is it not?

Mr. Reid: Yes. At the present time it is owned by a subsidiary of the Boise Cascade Corporation.

Senator Burchill: There is no objection to it, is there?

Mr. Reid: No. I have a letter here which I can put on record, if you wish, from the Boise Cascade Corporation giving permission and also a copy of a brief which they submitted to the Fort Frances-International Falls Bridge Commission, indicating their approval of the principle of the bridge, but taking issue with the downtown site which has been suggested.

Senator Rattenbury: I am sorry, would you repeat that last statement?

Mr. Reid: The brief took issue with the proposed downtown site. The reason they are opposed to it is that they recently built a $45 million kraft mill at Fort Frances, and the proposed downtown site would have the bridge structure going over their kraft mill and making an S-turn to an area which would be cleared of existing buildings and houses.

Senator Rattenbury: And this legislation is wide open on that?

Mr. Reid: It has nothing to do with the site.

Senator Kinnear: How long are the approaches on the east end and the west end of the bridge?

Mr. Reid: This would depend on the site. The approaches will be fairly narrow if the downtown site is chosen. They will be more elaborate at the east end and even more elaborate at the west end.

Senator Kinnear: How long do you think the bridge approach would be?

Mr. Reid: I do not have that information. So much depends upon the type of construction, and this cannot be decided upon until the authority is given by this legislation to make the technical arrangements. The Province of Ontario, however, has offered to contribute up to 90 per cent of the costs incurred by the town of Fort Frances for the construction of the proposed approaches. They have also offered to pay 50 per cent of the cost incurred by the town in acquiring properties by way of expropriation for the bridge site, and they have left open-ended the cost of reconstructing major arteries of the town of Fort Frances, if it becomes necessary, depending on where the bridge is located.

Senator Rattenbury: I understand from Senator Benidickson that provision will be made for entry on to the Trans-Canada Highway?

Senator Benidickson: No.

Senator Rattenbury: Did I misunderstand?

Mr. Reid: There will be entry on to Highway 71, which connects 120 miles north, with the Trans-Canada Highway.

Senator Blois: I understand that the tolls are being quoted in U.S. funds. If the United States dollar changes, one might have to pay 85 cents or 87 cents or something like that. It could cause tremendous confusion?

Mr. Reid: At the present time tolls are collected by the bridge company and the fees are posted. They vary from time to time when there are significant changes in the Canadian dollar.

Senator Blois: Is there no way of having the same fee at each side? When Canadians are using a bridge which is half Canadian there are complaints when they have to pay 2 or 3 cents more than Americans, as in the case of a bridge that was opened some years ago.

Mr. Reid: We already have this situation in the area at the Rainy River Bridge, where fares are collected solely in American money and one must pay the exchange rate. In International Falls at present the fares are collected in both Canadian and U.S. currencies.

Senator Prowse: But at Windsor, you can pay in either currency.

Mr. Reid: Yes, at Fort Frances as well.

Senator McGrand: On which side of the river is the larger population?

Mr. Reid: I think that at the present time it would be in Fort Frances, on the Canadian side.

The Chairman: Are there any further questions? Is there a motion to report the bill without amendment?

Senator Benidickson: On the point that I indicated, I do not know whether it would be possible to get approval of the committee on this existing policy in Canada of asking a non-profit authority to pay for the cost of the offices of Canadian immigration and customs.

Senator Prowse: It is not in this bill, is it?

Senator Benidickson: It is not referred to in the bill.

Senator Prowse: Then let us leave it.

The Chairman: I think, Senator Benidickson, that we should pass this bill without amendment, and then you can draw the attention of senators to that matter later.

Senator Rattenbury: As a matter of interest, may I ask Senator Benidickson what is the usual practice in respect of fees now. For example, if a charter flight arrives at an international airport from overseas, and

the customs officer has to be called out after hours, is there a fee charged?

Senator Benidickson: There is a fee charged.

The Chairman: Are there any further questions? Is it agreed that I report the bill without amendment?

Hon. Senators: Agreed.

The Chairman: We will now discuss the second item on the agenda, the Trans-Alaska pipeline and tanker project. Before Senator Langlois, Senator Hastings and Senator Argue came in, I suggested that we not take this under consideration, but those three senators have asked that this matter be now considered. Who will speak to it first?

Senator Argue: Mr. Chairman, you will understand that I did not want this motion here in the first place. The Senate had before it a motion to deal with this. While it was my baby in the Senate, in a sense it is not my baby here. Although it is nearly dead now, I would hate to see it buried here today, or buried in this committee at all.

In my opinion there is only one thing we can do, and that is to proceed to deal with the motion as quickly as we can. After all, we are close to adjourning, and if we decide that we cannot deal with the motion before the adjournment, that will mean it will be put over until September. According to my understanding of the issues, and what I have read in the newspapers, the whole question may already be decided by September 1. This matter was placed before the Senate on April 1, and it seems to me that we have already taken far too long in dealing with it and not coming to a conclusion.

The House of Commons Committee on Environmental Pollution, which is chaired by Mr. David Anderson, has had some very important and learned witnesses before it and has heard a great deal of evidence dealing with this very question. My understanding is that that committee at this very moment is *in camera* considering its report. Of course, I have no idea what that report will be, but it occurs to me that we should set up a steering committee as quickly as possible to decide on witnesses that could be called before our committee, and as our first witness I would suggest Mr. Anderson, M.P.

I understand the Senate will be sitting on Monday and I think we should meet at the earliest possible date. As I have already said, we should call David Anderson as our first witness, because he heads the Commons committee and knows the subject well. He could give us some very good advice. I hope the committee will hear whatever witnesses it wishes to hear as quickly as possible, and deal with the motion before adjournment.

Senator Langlois: Mr. Chairman, I understand the Minister of External Affairs is interested in appearing before this committee. Unfortunately, I have been unable to reach him so far this morning, to arrange a time. When I do get in touch with him, it would be convenient if I could specify a time.

Senator Prowse: I would move that when we adjourn we do so until Tuesday morning at ten o'clock. In the interim we can arrange to have our witnesses.

Senator Rattenbury. Mr. Chairman, owing to previous commitments I shall not be able to be here next week. I should like to place on record, therefore, the fact that I did oppose Senator Argue's motion in the Senate, but perhaps I did not make the basis of my opposition clear at that time. I should like to take the opportunity now to make it clear.

I oppose his motion on the basis that I oppose any restraint on the use of the high seas for international trade. I do not think this committee, or any other committee of the Senate, should place itself in the position of trying to put restrictions on international trade, and that is what would really be involved here since it concerns the use of the high seas.

Senator Smith: Before we adjourn, Mr. Chairman, perhaps we should set up the steering committee in accordance with Senator Argue's suggestion.

Senator Langlois: For the information of the members of this committee, Mr. Chairman, I should tell them that this afternoon I intend to move that when the Senate adjourns today it do stand adjourned until Monday evening at eight o'clock. I have every reason to believe that that motion will be agreed to. Bearing that in mind, perhaps we can set our schedule of work accordingly.

The Chairman: I would suggest that Senator Langlois, Senator Prowse and Senator Argue form a sub-committee of this committee to arrange the details of the meeting of the committee, which will be at ten o'clock on Tuesday. That sub-committee can see to the details concerning the appearance of witnesses and so on. Is that agreed?

Hon. Senators: Agreed.

Senator Prowse: Then I move that we adjourn until Tuesday morning at ten o'clock, Mr. Chairman.

The Chairman: Is that agreed?

Hon. Senators: Agreed.

The Chairman: The committee is now adjourned until ten o'clock Tuesday morning.

The committee adjourned.

APPENDIX

International Bridge Committee
International Falls, Minnesota
Fort Frances, Ontario
P.O. Box 129,
Fort Frances, Ont.

June 11, 1971

Senator the Hon. W. M. Benidickson
The Senate
Ottawa, Ontario

Dear Bill:

Referring to our recent correspondence, enclosed is a letter from the Minnesota Highways Department confirming that Governor Wendell Anderson has signed their bridge legislation into law.

Canada has on several occasions been accused of "dragging its feet", and it is hoped our federal enabling legislation can now go through without further delay. While a trip to Ottawa is no particular treat for me, if necessary, I would appear before the Senate Committee and answer any questions they might have.

Yours sincerely,

H. A. L. Tibbetts,
Chairman, Canadian Section.

HALT/smn
c.c: J. L. Forster, D.H.O.
cc mailed June 15, 1971 to:
Mr. John Reid, M.P.
Mr. A. E. Ritchie

International Bridge Committee
International Falls, Minnesota
Fort Frances, Ontario
P.O. Box 129,
Fort Frances, Ont.

June 11, 1971

Mr. T. S. Thompson
Staff Assistant
Minnesota Highways Dept.
St. Paul, Minnesota 55101
U.S.A.

Dear Mr. Thompson:

SP 3616 (TH 53-315)
Fort-Falls Bridge Authority

Thank you for your letter of 9th June advising that Governor Anderson has signed your enabling legislation.

I am advising Senator Benidickson of Minnesota's action, and I am confident the Fort-Falls Bridge Authority Act will shortly receive its third and final reading in Ottawa.

I enjoyed our recent meeting and also the luncheon on Wednesday with your Duluth officials. In my opinion, most of our problems have been resolved and the only hold-up is our respective Federal legislation.

Yours truly,

H. A. L. Tibbetts,
Chairman, Canadian Section.

HALT/smn
c.c: Sen. W. M. Benidickson

State of Minnesota
Department of Highways
St. Paul, Minn. 55101

June 9, 1971

Mr. H. A. L. Tibbetts
Chairman—Canadian Section
International Bridge Committee
Fort Frances, Ontario

Re: S.P. 3616 (T.H. 53-315)
Fort-Falls Bridge

Dear Mr. Tibbetts:

On June 3, 1971, Governor Anderson signed Chapter 678, which permits creation of a joint international authority to construct and operate bridges over the waters between this State and Canada.
We hope that your Government will take action soon on its companion legislation and that our Congress will do likewise.

Sincerely,

T. S. Thompson
Staff Assistant

Published under authority of the Senate by the Queen's Printer for Canada

Available from Information Canada, Ottawa, Canada.

THIRD SESSION—TWENTY-EIGHTH PARLIAMENT

1970-71

THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING SENATE COMMITTEE ON

TRANSPORT AND COMMUNICATIONS

The Honourable J. CAMPBELL HAIG, *Chairman*

No. 7

THURSDAY, JUNE 17, 1971

and

TUESDAY, JUNE 22, 1971

First and Second Proceedings on
Subject-matter of a motion respecting
Trans-Alaska pipeline and tanker project

REPORT OF THE COMMITTEE

(Witnesses:—See Minutes of Proceedings)

23700—1

STANDING SENATE COMMITTEE ON
TRANSPORT AND COMMUNICATIONS

The Honourable J. Campbell Haig, *Chairman*

The Honourable Senators:

Argue
Blois
Bourget
Burchill
Connolly (*Halifax North*)
Denis
*Flynn
Fournier (*Madawaska-Restigouche*)
Haig
Hayden
Isnor
Kinnear
Langlois
Macdonald (*Cape Breton*)
*Martin
McElman
McGrand
Michaud
Molson
Nichol
O'Leary
Petten
Prowse
Rattenbury
Robichaud
Smith
Sparrow
Welch—(26)

(Quorum 7)

**Ex officio member*

Orders of Reference

Extract: From the Minutes of Proceedings of the Senate, April 1st, 1971:

Pursuant to Order, the Honourable Senator Argue moved, seconded by the Honourable Senator Macdonald (*Cape Breton*): That this House opposes the Trans-Alaska pipeline and tanker projects and urges the Government to proceed with the various economical and ecological feasibility studies of alternate routes and to report from time to time upon the most appropriate steps that in the government's opinion may from time to time be taken to accomplish the prudent and efficient transportation of northern oil and gas.

After debate,
The Honourable Senator Macdonald (*Cape Breton*) moved, seconded by the Honourable Senator Choquette, that further debate on the motion be adjourned until the next sitting of the Senate.

The question being put on the motion, it was—
Resolved in the affirmative.

Subject: **Referring** the subject-matter of a motion to the Standing Senate Committee on Transport and Communications for consideration.

Extract: From the Minutes of Proceedings of the Senate of Canada, June 2nd, 1971:

Pursuant to the Order of the Day, the Senate resumed the debate on the motion, in amendment of the Honourable Senator Langlois, seconded by the Honourable Senator Smith, to the motion of the Honourable Senator Argue, seconded by the Honourable Senator Macdonald (*Cape Breton*):

That this House opposes the Trans-Alaska pipeline and tanker project and urges the Government to proceed with the various economical and ecological feasibility studies of alternate routes and to report from time to time upon the most appropriate steps that in the government's opinion may from time to time be taken to accomplish the prudent and efficient transportation of northern oil and gas; that the motion be not now adopted, but that the subject-matter thereof be referred to the Standing Senate Committee on Transport and Commmunications for consideration.

After debate, and—
The question being put on the motion, in amendment—

The Senate divided and the names being called they were taken down as follows:—

YEAS

The Honourable Senators

Boucher,	Inman,
Bourget,	Isnor,
Bourque,	Kinnear,
Carter,	Lafond,
Casgrain,	Laird,
Connolly (*Ottawa West*),	Lamontagne,
Cook,	Langlois,
Denis,	Lefrançois,
Desruisseaux,	Martin,
Duggan,	McDonald,
Eudes,	McElman,
Fergusson,	McNamara,
Fournier (*de Lanaudière*),	Robichaud,
	Smith—27.

NAYS

The Honourable Senators

Argue,	Lang,
Beaubien,	Macdonald,
Bélisle,	Méthot,
Blois,	Molson,
Davey,	O'Leary,
Flynn,	Quart,
Grosart,	Walker,
Haig,	White—16.

So it was resolved in the affirmative.

Robert Fortier,
Clerk of the Senate.

23700—1½

Minutes of Proceedings

Thursday, June 17, 1971.
(7a)

Pursuant to notice the Standing Senate Committee on Transport and Communications proceeded at 11:25 to the consideration of the subject-matter of a motion respecting Trans-Alaska pipeline and tanker project.

Present: The Honourable Senators Haig (*Chairman*), Argue, Blois, Burchill, Flynn, Kinnear, Langlois, McGrand, Prowse, Rattenbury, Robichaud and Smith. (12)

Also present but not of the Committee: The Honourable Senator Benidickson.

In attendance: Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel; Mr. Pierre Godbout, Assistant Law Clerk and Parliamentary Counsel.

On motion, it was Resolved to print 800 copies in English and 300 copies in French of these Proceedings.

After discussion, it was agreed that a Steering Committee composed of the Honourable Senators Langlois, Argue and Prowse would meet to decide who would be invited to appear as witnesses.

At 11:45 a.m. the Committee adjourned to Tuesday, June 22nd, 1971, at 10:00 a.m.

Tuesday, June 22nd, 1971
(7b)

Pursuant to adjournment and notice the Standing Senate Committee on Transport and Communications met this day at 10:25 a.m., for the consideration of the subject-matter of a motion respecting Trans-Alaska pipeline and tanker project.

Present: The Honourable Senators Haig (*Chairman*), Argue, Blois, Burchill, Isnor, Langlois and MacDonald. (7)

Present but not of the Committee: The Honourable Senator McDonald.

In attendance: Mr. Pierre Godbout, Assistant Law Clerk and Parliamentary Counsel.

On motion of the Honourable Senator Blois, it was *Resolved* to print 800 copies in English and 300 copies in French of these Proceedings.

The following witnesses were heard:

Mr. David Anderson, Member of Parliament for Esquimalt-Saanich, B.C.,

Captain J. B. Cook, Chairman, British Columbia Coast Pilots of Vancouver.

It was agreed that the Steering Committee composed of the Honourable Senators Langlois, Argue and Prowse should meet to study the evidence given by the witnesses on this day, as well as the report of the "Special Committee on Environmental Pollution" of the House of Commons and report to the Main Committee on Thursday, June 24th, 1971, at 9:30 a.m. Furthermore, it was *Resolved* that the report of the Steering Committee be sent to members of the Standing Senate Committee on Transport and Communications.

At 11:20 a.m., the Committee adjourned to the call of the Chairman.

ATTEST:

Aline Pritchard,
Clerk of the Committee.

Reports of the Committee

Monday, June 28, 1971

The Senate Standing Committee on Transport and Communications has, in obedience to the Order of Reference of June 2nd, 1971, considered the Subject matter of a motion respecting Trans-Alaska pipeline and tanker projects and reports as follows:

Your Committee recommends:

That the Senate oppose the Trans-Alaska pipeline and tanker project and urge the Government to proceed with the various economical and ecological feasibility studies of alternate routes and to report from time to time upon the most appropriate steps that in the government's opinion may from time to time be taken to accomplish the prudent and efficient transportation of northern oil and gas.

Respectfully submitted,

J. Campbell Haig,
Chairman.

The Standing Senate Committee on Transport and Communications

Evidence

Ottawa, Thursday, June 17, 1971

The Standing Senate Committee on Transport and Communications, to which was referred the subject-matter of a motion respecting the Trans-Alaska pipeline and tanker project, met this day at 11.25 a.m.

Senator J. Campbell Haig (*Chairman*) in the Chair.

The Chairman: We will now discuss Item (*b*) on the notice, the Trans-Alaska pipeline and tanker project. Before Senator Langlois, Senator Hastings and Senator Argue came in I had suggested that we not take this under consideration, but those three gentlemen have asked that this matter be now considered. Who will speak to it first?

Senator Argue: Gentlemen, you will understand that I did not want this motion here in the first place. The Senate had before it a motion to deal with this. So while it is my baby in the Senate, in a sense it is not my baby here, and although it is nearly dead now I would hate to see it buried here today, or buried in this committee at all.

In my opinion there is only one thing we can do and that is to proceed to deal with the motion as quickly as we can. After all, we are close to adjourning and if we were to decide that we could not deal with the motion before the adjournment date, then that would mean it would go on into September, and according to my understanding of the issues and what I have read in the newspapers the whole question may already be decided by September 1. This matter was placed before the Senate on April 1, and it seems to me that we have already taken far too long in dealing with it and still not bringing it to a conclusion.

The House of Commons Committee on Environmental Pollution, which is chaired by Mr. David Anderson, has had some very important and learned witnesses before it, and has heard a great deal of evidence dealing with this very question. My understanding is that that committee at this very moment is *in camera* considering its report. Of course, I have no idea what that report will be, but it occurs to me that we should set up a steering committee as quickly as possible to decide on witnesses who could be called before our committee. As our first witness I would suggest Mr. David Anderson, M.P. He has headed the Commons committee. He knows the subject well. He could give us some very good advice. I hope the committee will hear whatever witnesses it wishes to hear as quickly as possible, and will deal with the motion before adjournment.

Senator Langlois: Mr. Chairman, I understand the Minister of External Affairs is interested in appearing before this committee. Unfortunately, so far this morning I have been unable to reach him to arrange a time. When I do get in touch with him, it would be convenient if I could specify a time for him.

Senator Prowse: I would move that when we adjourn we do so until Tuesday morning at ten o'clock. In the interim we can arrange to have our witnesses.

Senator Rattenbury: Mr. Chairman, owing to previous commitments I shall not be able to be here next week . I should like to place on record, therefore, the fact that I did oppose Senator Argue's motion in the Senate chamber on a basis which perhaps I did not make clear at that time. I should like to take the opportunity to make it clear now. I oppose his motion on the basis that I oppose any restraint on the use of the high seas for international trade. I do not think this committee or any other committee of the Senate should place itself in the position of trying to put restrictions on international trade, and that is what would really be involved here, since it concerns the use of the high seas.

Senator Smith: Before we adjourn, Mr. Chairman, perhaps we should set up the steering committee in accordance with Senator Argue's suggestion.

Senator Langlois: For the information of the members of this committee, Mr. Chairman, I should tell them that this afternoon I intend to move that when the Senate adjourns today it do stand adjourned until Monday evening at eight o'clock. I have every reason to believe that that motion will be carried. Bearing that in mind, perhaps we can set our schedule of work accordingly.

The Chairman: I would suggest that Senator Langlois, Senator Prowse and Senator Argue form a sub-committee of this committee to arrange the details of the meeting of the committee, which will be at ten o'clock on Tuesday. That sub-committee can see to the details concerning the appearance of witnesses and so on. Is that agreed?

Hon. Senators: Agreed.

Senator Prowse: Then I move that we adjourn until Tuesday morning at ten o'clock, Mr. Chairman.

The Chairman: Is that agreed?

Hon. Senators: Agreed.

The committee adjourned.

Ottawa, Tuesday, June 22, 1971

The Standing Senate Committee on Transport and Communications, to which was referred the subject-matter of a motion respecting the Trans-Alaska pipeline and tanker project, met this day at 10.25 a.m.

Senator J. Campbell Haig (*Chairman*) in the Chair.

The Chairman: Gentlemen, we now have a quorum to proceed with the motion referred to this committee on June 2:

> That this House opposes the Trans-Alaska pipeline and tanker project and urges the Government to proceed with the various economical and ecological feasibility studies of alternate routes and to report from time to time upon the most appropriate steps that in the government's opinion may from time to time be taken to accomplish the prudent and efficient transportation of northern oil and gas;

Then it was proposed in amendment:

> that the motion be not now adopted, but that the subject-matter thereof be referred to the Standing Senate Committee on Transport and Communications for consideration.

Honourable senators, we have as our witness this morning Mr. David Anderson, the federal Member of Parliament for Esquimalt-Saanich, British Columbia, who is chairman of the House of Commons committee on environmental pollution. That committee's report was tabled in the house yesterday afternoon.

Mr. Anderson has made an extensive study of this subject and is here to discuss the matter with us. He also has a map on the board.

Mr. David Anderson, M.P.: Thank you very much, Mr. Chairman. Honourable senators, may I thank you for inviting me here. It certainly is an honour and pleasure for me. Of course, the subject is very important and I feel flattered that you are calling me as your first witness.

About three months ago the committee which I chaired in the house started looking into this matter of the tanker route between Alaska and Washington state and the problems it would pose to the Canadian coast. It is a subject that I have been looking into for about a year and a half, but only about three months ago, with the announcement of the construction of a $150 million refinery at Cherry Point, people began to realize that this tanker route, which the American oil companies were proposing, was very much in the offing.

The American Government itself must approve the construction of a pipeline in Alaska. If this approval is not given, there will be no tanker route. In other words, the transportation system is an 800-mile pipeline in Alaska, followed by a 1200-mile shipping route between southern Alaska and the American mainland, what are called now the "lower 48" states. The U.S. government has not yet given that approval. They are still considering the matter.

It was at this stage that I got involved, by a trip I made to Washington to testify before the U.S. Department of the Interior hearings on the ecological impact, in other words, the damage to the environment, that their transportation proposals would entail.

Senator Isnor: Did you go representing any particular group?

Mr. Anderson: No, sir. I went on my own, as a result of a press release that the Department of the Interior sent out, asking those interested in making presentations to apply. I applied, and they were kind enough to include me in the group of American senators and Congressmen who had testimony to give on this route. I did not represent the Canadian Government. I did not represent either of the Houses of Parliament. I was simply there as a private Canadian citizen. They were kind enough, as I said, to give me of their time and to have my testimony recorded.

In actual fact, at those hearings, I was the first person to mention this particular problem—that is, the problem that the tankers would pose. The Americans had concentrated on the pipeline problems in Alaska. They had almost completely ignored the problems that would occur if the pipeline were built and ships started moving the oil between the southern end of the pipeline and Washington state.

The objection I had at that time was that no studies had been done. How could we analyze, how could we tell how dangerous the route was, if no studies had been done? How could we tell what should be done to minimize the risk, if they had done no preparatory work in looking at these waters?

After this testimony, I returned to Canada. My committee began looking at this problem, and we called a number of witnesses before us. With your permission, I will quickly go over them. We had three ships' captains or tugboat captains, and two of these were also pilots. We had two oceanographers, one from the University of Washington, down in Seattle, and the other from the University of British Columbia, in Vancouver. We had a lawyer from Washington, D.C., commenting on the defence and economic aspects. We had Dr. Passmore, of the Wildlife Federation. We had a Canadian Wildlife Service man. We had two professors of zoology, one from Washington and one from the University of Alberta. In other words, there was quite a good range of fourteen witnesses from different specialties, including—and I would like to emphasize this—the practical people who actually have to handle ships in those waters, the pilots who are responsible for the safety of navigation. We considered their testimony most carefully. I would be delighted to furnish to interested members of this committee the relevant committee minutes of my house committee, copies of which I have here.

The first conclusion was that a spill is inevitable. Although everything can and must be done to minimize a spill, if they set up this route, there is no way a spill can be avoided. The reasons for this, of course, are strictly mathematical. Until there is no human error, until there are no equipment faults, accidents will occur. Accidents will occur in this area and in particular in the area that starts with Cape Flattery here at the very northwest of the continental U.S.A.

The conclusion of the committee was unanimous and it was based on the fact that when you are here you get into confined waters. The distance from here to the boundary, if I may refer to the map—and this line marks the boundary between the United States and Canada—is ten miles on either side. Once you knock off the amount that you must stay away from the shore, once you knock off the centre dividing line, you have relatively narrow lanes on each side of this dividing line in which the ships will have to travel.

In regard to the modern tanker, we had a naval architect before us who discussed this. The modern tanker is not a

manoeuverable vessel; it is underpowered; it is extraordinarily large, with thremendous momentum or inertia. For example, the largest tankers of the second world war were approximately one-tenth the size of these tankers which the oil companies are planning for this route. What they will do thereafter, I do not know. They may have even larger tankers in mind. The largest tankers of the second world war were just lighters, what one might describe as tenders, compared to these enormous tankers of today. These modern tankers are not very manoeuverable: they cannot stop quickly; they have a tremendous amount of sheer when they turn. You have to anticipate this. In other words, they are a difficult vessel to manage.

In this area there is a fair amount of bad weather. At Cape Flattery, for example, visibility is badly restricted by fog for 16 per cent of the time in the month of August. At Race Rocks, close to Victoria on the Canadian side, the foghorn was once blown continually for 29 days.

Once shipping reaches that point it is in the pilotage area. The pilots are picked up in Canada at Race Rocks, or at Ediz Hook on the American side. There are two choices. They can proceed this way via route "A", through Rosario Strait, or via route "B", through Haro Strait and Boundary Pass.

My point is that here, at its narrowest, the strait is one and one-half miles wide. Because of their draught, the enormous supertankers cannot be near the shore; they must be out from the shore on both sides. Therefore, instead of a corridor one and one-half miles wide, it is only perhaps one mile. In other words, route "A" is through very confined waters in Rosario Strait. On the chart I have circled in red the dangers which would put a tanker on the rocks.

Senator Isnor: Are these American-owned tankers?

Mr. Anderson: Yes, and they would probably be the best equipped and best manned tankers. However, we must remember the pilot error and human error of all types to which ships are prone. It is not only the tanker, of course; we must bear in mind the ship that hits the tanker. A ship may be perfect, with the best possible crew, and an accident may happen to it because a rust bucket with perhaps a not fully qualified crew will hit it.

Last year we had a case, which is known certainly to one of you very well, in which a Soviet freighter collided with a B.C. government ferry. It was not a case of bad seamanship; I think they were properly trained crews on both boats. It was an accident involving human error, which occurred under favourable conditions. It was in Active Pass, which is not one of the two I have indicated here. However, it does illustrate the fact that even good ships with good crews get into difficulties.

Therefore, we must consider these confined waters, the frequent fog and, in particular, tides and currents. The tides at the strongest run approximately five to seven knots, which is substantial, especially when a ship attempts to manœuvre. When a ship attempts to manœuvre in a tideway it becomes that much more difficult.

Senator Burchill: At what port is it planned to deliver the oil?

Mr. Anderson: There is now a refinery at Cherry Point, approximately 12 miles south of the Canadian line. The Atlantic Richfield Company owns that $150 million refinery. Nearby, owned by another company, is a large tract of land. There is a possibility, regarding which no one will give us information, of a pipeline from here, across the United States to Chicago, which is a major American market for oil.

We simply have not received information on the amount of oil that will go into that area. At present some people say that as there is only one refinery there, what is the concern? It is a $150 million refinery processing 100,000 barrels of oil per day, which perhaps doubles the amount moving in that area, but it is still not a great deal. I wonder whether it is the thin end of the wedge. I am convinced that it is. This will not involve one ship every third day, but at least two ships each day. These are guesses. I am very critical in my report of the fact that even the Canadian Government civil servants sent to Washington as a result of an agreement between Mr. Sharp, our Minister of External Affairs and Mr. Rogers, their Secretary of State, were unable to obtain accurate figures of the amount of oil being moved. They complained of that on their return. This is one of the great areas of uncertainty, for which I apologize. All I can say is that it appears that this information is being concealed.

This Cherry Point refinery, however, is the destination of the oil at present. By the way, that refinery is now served by Alberta oil transported across the Trans-Mountain Pipeline, branching off near Vancouver and serving down there. That market for Canadian oil would be lost. That is another effect, but not one which my committee on the environment took into account.

There are extensive currents, bad weather, very confined waters and, as you gentlemen well know, some of the most attractive parts of Canada contained in the shorelines of the gulf islands of British Columbia and Vancouver Island. Victoria and my riding comprise a retirement area because it is still attractive and offers the type of life the retired wish to lead. I apologize for emphasizing this, coming from the area. It is not industrial and many easterners have made a deliberate choice to retire there because of that. There are not that many types of attractive island landscapes in Canada which enjoy a good year-round climate.

This is quite unique and, at present, undamaged. The tourist and fishery industries are important, not only to us, but to the Americans. Sport fishing, of course, cannot be valued in dollars. The amount of enjoyment people obtain from being able to retire and fish two or three times a week cannot be calculated in dollars and cents. This will be in jeopardy when the route is established because of the tremendous amount of oil and the currents. The clean-up work done in Chedabucto Bay was minimal compared to what would have to be done in this area if a major tanker got into difficulty. The difficulties faced at Chedabucto Bay—and I do not wish to downgrade that effort—would be minimal compared to the enormous amounts of oil that would be transported and, the terrific currents in this area.

The proposal is that an industrial canal be established in what is basically a lovely recreational area. There is no

offsetting advantage to Canadians, either here or elsewhere. There are no jobs to be provided Canadians. There is nothing whatsoever in this for us except probably the loss of our Alberta oil market in the Pacific northwest. It appears to us that under those circumstances the environmental considerations become paramount. We have nothing to gain; we have a great deal to lose; and, therefore, the conclusion of my committee was that it should be opposed with all the power the federal Government can bring to bear in this particular battle. I must say here that we are not opposing the American Government; we are not opposing the American people. There are many in the United States who feel exactly the way we do. The Lummi Indian tribe has set up an aquaculture development on Lummi Island. They have a large investment. They employ as many people in their own $4 million co-operative as the Atlantic Richfield people employ at their Cherry Point refinery, and it would be wiped out by an oil spill.

There have been oil spills. There was an oil spill of 55 hundred barrels of diesel fuel only six weeks ago at Anacortes. Three or four months ago, two ships collided in San Francisco Bay. They were using the same radio frequency and were owned by the same company. Therefore, everything should be in their favour to avoid a collision with one another. However, accidents will occur. We can minimize the risk, but we cannot eliminate it. If there is an oil spill in this area it will do tremendous damage on both sides of the border. The Americans are split as to whether or not to approve this route. I do not think we should in any way think this is an anti-American point of view that our committee has come up with. Senator Muskie is opposed to this and he, as you well know, is the front-running Democratic contender for the nomination for the Presidency next year. Representative Les Aspin of Wisconsin, another Democrat, is also opposed to this. A resolution opposing the Alaska pipeline was signed by 47 senators and congressmen, including, Senator Kennedy as well as Senator Muskie. President Nixon has stated he is waiting until his environmental advisers tell him what is the right approach before going ahead.

I have here a quotation from Rogers Morton, the United States Secretary of the Interior, who is the man ultimately responsible for deciding on the environmental effect. The headline reads: "Morton not in favour of oil pipeline". It is from the Seattle *Post Intelligencer* of June 11. Morton denied this the next day, but the story stands. In other words, what I am saying is that there was enough doubt about what he said that an honest reporter came to the conclusion that Morton was opposed.

I would again like to emphasize that this is not an anti-American approach. There are Americans who favour this, and there are Americans who oppose it. I think that we, from our point of view, deciding on the merits, can only oppose it, because I can see no good in it for us, and I think it must result in damage to Canada.

I am afraid this is a very disjointed presentation, but I will be delighted to answer any questions honourable senators may have.

Senator Argue: When your committee made its report, did anyone on the committee oppose the report, or was it a unanimous one?

Mr. Anderson: No, senator, the committee was unanimous in its conclusions. A quorum was present, although every member of the committee was not present. I am answering for the committee members who were present, and it was a unanimous report. No party took the position that they were not in favour, and our unanimous report was that the Canadian Government should vigorously oppose this proposal because oil spills are inevitable and damage to Canadians is also inevitable.

Senator Argue: What alternative do you see if this is not followed? How might the oil be moved?

Mr. Anderson: Well, that is an excellent question. There are alternative routes. A railway study is now under way by an American corporation. I forget the name of the American corporation doing the study, but it is a multi-million dollar study. The Mackenzie valley route is a possibility. I do not suggest we should accept the Mackenzie valley route because we have not yet done adequate studies on that, but it is a possibility. If there is a delay, these alternative routes can be looked at intelligently.

I would like to quote Rogers Morton, the United States Secretary of the Interior, and this is a direct quote from the Seattle *Post Intelligencer*:

> I think it is an awful lot of money to spend for 30 or 40 million barrels of oil.

I emphasize that there is not a great deal of oil in Alaska. It is not something which must be brought out because there is an enormous pool there. The Alaskan pool is not as valuable in terms of the total amount of oil as are the Athabaska tar sands. We have ten times as much oil in that particular area. Perhaps instead of spending $5 billion on a pipeline, we should be spending $1 billion on a crash research program with respect to the Athabaska tar sands. Perhaps we should be doing the same for the Colorado oil shale deposits. There are so many unanswered questions in this area that a delay of a year or two, in order to investigate to see whether we really do need to transport Alaskan oil now, would perhaps be in everybody's interest. It would not be in the interests of those who have oil leases. They have spent a great deal of money. There was a great euphora three years ago, and many oil company presidents went to Alaska to bid for leases, and now they are beginning to realize that they were perhaps a little ahead of the game. Money has been spent stockpiling pipe in Alaska. These are bad company decisions and I do not honestly feel—I am no socialist in this respect—that the Government should bail these companies out to save them from their bad decisions. For example, I do not think the British Government was wrong when it did not bail out Rolls Royce when it ran into difficulties as a result of managerial mistakes. I think the President of the United States is right in not bailing out the Lockheed Aircraft Company whose problems stem directly from managerial mistakes. Just because they spent such enormous amounts of money, I do not think that the Government should bail them out.

Senator Argue: Of all the possible routes, Mr. Anderson, would you say that this is absolutely the worst one?

Mr. Anderson: Again, it would depend on the research that has not yet been done on the Mackenzie valley route. I

would strongly suspect it is not the best. I would say the worst of all may be the route with the tankers going through the Northwest Passage to Prudhoe Bay. That may be the worst, but I certainly do not think this is the best route.

Senator Langlois: Well, in this regard I have here this morning Captain Barry Cook of Vancouver, who is the Chairman of the British Columbia Coast Pilots, and it would be very interesting for this committee to have Captain Cook and his staff tell us about the navigational hazards in the two proposals. He is in this room now, and he would be available whenever the committee wished to hear him.

The Chairman: I think we should hear from Captain Cook now.

Senator Argue: I think we should have all the questions the senators wish to pose to Mr. Anderson first.

Senator Langlois: I do not want to interrupt this witness at all.

Senator Macdonald: How would you meet the argument which has been advanced that on the east coast they already use these large tankers? Why not also use them on the west coast?

Mr. Anderson: That is an excellent question. The first point is that the routes on the east coast are established. I am an environmentalist, but I do not think you should cut off businesses and shipping routes simply because they set up their equipment before we set up our regulations. I think you have to give them an opportunity to make the regulations more slowly so that you can phase in, in terms of, for example, better equipment and better ships.

I will quickly add though that when you are establishing what is basically a new route, although there is a route established there now, many times as much oil will be transported, and when you are doing that you should go for the best you can. In other words, you should go for what you hope you will have on the east coast five to ten years from now, or even 15—I do not know.

On the east coast communities are formed around harbours and there is the tradition that the oil will move. The Irving interests gave very interesting testimony to this effect before my committee last fall. You cannot simply say, "Right, now we are going to set up rules which are "a lot tougher." But before an industry is established and before these patterns are established, I feel you have the right to go for the very highest degree of safety. Also I think before a route is established you should certainly search for alternatives which may be better. I have difficulty in answering Senator Argue's question, but I believe there may be alternatives not yet looked at that are better.

Senator Macdonald: Would it not also be an argument that there are not the same navigational dangers on the east coast as there are on the west?

Mr. Anderson: From Mr. Cove of Vancouver and Captains Dighton and Davenport of Victoria, I gathered that our problems, particularly in these confined waters, make Chedabucto Bay look a little easier. It is a straighter approach; it does not have the doglegs; itdoes not have this right-hand bend. Of course, you will have an expert witness who will follow me. It appears to be a better and easier type of navigational approach.

Senator Argue: Mr. Anderson is not a member of the Government, but is close to Government and is associated with it. I wonder if he would care to say what attitude the Government itself is taking. I would like to refer particularly to a report in this morning's *Globe and Mail* on a speech by the Environment Minister, Jack Davis, prepared for delivery to a joint meeting of the Canadian Botanical Association and the American Institute of Biological Science:

> In it, the minister strongly opposed large oil tankers travelling through the Strait of Juan de Fuca and the Strait of Georgia to deliver oil from Alaska to refineries on Puget Sound.
>
> Large tankers, he said, should not be allowed to use these special waters. They should instead be restricted to the high seas . . .
>
> "Why bring the tankers in past Victoria when scenic values and the recreational potential of this tight little wonderland could be destroyed . . . in a matter of hours?"

We know the theory of Cabinet solidarity, and it seems to me the Government is clearly on record with this statement of the minister, but I wonder, Mr. Anderson, if you would say what you feel to be the position of the Government, as stated in the House of Commons and to your committee, and so on.

Mr. Anderson: I think that is probably the strongest statement Mr. Davis has made. I believe that represents his position very accurately. I would give the palm to Mr. Sharp for having looked at this problem first and most carefully. He is certainly opposed, in the things that he has said, to this tanker route. He has gone down to the States and was there on the 10th of this month to discuss this matter with Rogers Morton, the Secretary of the Interior, and also with Rogers, the Secretary of State. He is opposed to it because there is simply no value to us in this route. He is doing what he can.

I think the Government has rather slowly come around to the point of looking at this problem, but now that it has done so it very definitely opposes this route, certainly if, as you say, we can have faith in some Cabinet solidarity and in the statements of Davis and Sharp, which I think we surely can.

I should add just one thing. I was in Washington last week for three days at a conference sponsored by the Coast Guard, the oil industry itself and the environmental Protection Agency. It was a first-class conference. When the Americans do a thing like that, they do it well. Despite all the gadgetry available, it became perfectly clear that you can pick up oil in relatively small quantities from the water, be it a river or pond or where there are few waves or, in other words, where conditions are favourable. Obviously, prevention is the best thing. We look to prevention, and we had our witnesses discuss navigational aids, one-lane systems, and all sorts of things, but we still came to the conclusion there would be spills. Once you come to

that conclusion then, of course, as there is no benefit for us, you come to the conclusion that we should oppose this tanker route.

Senator Burchill: Did Mr. Sharp report to Parliament on the success of his mission?

Mr. Anderson: He made a report, yes, and I would say that it was more guarded than a positive statement of success. In other words, the Americans are willing to discuss this with us. However, Morton, the Secretary of the Interior, stated that in his view he is only concerned with the pipeline aspect, and if he approves the pipeline I think it will simply be a question of the Canadian and U.S. Coast Guards and our respective Departments of Transport discussing ways to minimize the problem, rather than whether or not this route should be established. I have the feeling that if the Americans who oppose this route lose their battle, we are inevitably faced with it.

Then the Americans will probably tell us, "We can bring our ships in through here, or in American waters, but if we do so there are likely to be more spills than if we use all the water without separation—in other words, if we make use of this water as if there were no border." So they would give us the choice, "Look, we could use route 'A' and we could keep our ships south of this line, but if we do that there will be more spills." The currents generally in this area are northwards, according to the two oceanographers we heard, so you are faced with the problem that if you do not collaborate with them, the chances of spills are likely to be higher. We will be forced to collaborate with them and use our waters for these tankers as though they were American, and the spills will probably be of such magnitude that it will be irrelevant where they occur. If I may illustrate on the map, the spills will cover that area if the tides or winds are that way, or this area if the tides and winds are the other way. So we will be forced to collaborate with them regardless. It is a rather unpleasant prospect, but I am afraid that to avoid problems we would have to.

Senator Langlois: Going back to these exchanges between Ottawa and Washington, is it not a fact that recently a joint commission or joint board was formed between the two countries to exchange views on pollution hazards from tankers?

Mr. Anderson: Yes, but only for the Great Lakes.

Senator Langlois: It is limited to the Great Lakes?

Mr. Anderson: Yes. I asked in the House whether this would be extended, and it was agreed it would be a good idea to extend it, but we have not yet got to that point.

Senator Langlois: Is this board or commission functioning?

Mr. Anderson: I understand it is, but whether or not it has actually got people going, I do not know. There is one problem, that the Americans might not be able to get the personnel without a special Congressional decision. The Administration has accepted it, but the Congress has not.

Senator Langlois: Is this a division or branch of the International Joint Commission?

Mr. Anderson: Yes, it is, but as yet the Americans have not started and funded it because it may need Congressional approval to do that.

Senator Macdonald: Do you know if any oil companies have entered into contracts to have these huge tankers built?

Mr. Anderson: I have not firm information on that. I believe they have given the contracts, but I do not believe that keels have been laid. We had excellent testimony from Derek Cove, the marine architect in Vancouver, about compartmentalization, double skins and so on, and if we and the Americans insisted, such features could be worked into the structure of these ships. They have not yet passed the point of no return.

I might add that last Wednesday Senator Magnusson introduced in the United States Senate a bill suggesting very tight regulations for the construction of American ships. Copies of the bill are not yet in Ottawa, but the Information Services of the U.S. Embassy will provide a copy to me as soon as it is available. Senator Magnusson is the chairman of the subcommittee of the Senate, and I understand that the chances of this getting to the floor of the Senate are extremely good. It will be a very tight bill as far as regulations governing construction are concerned. We would certainly like to see it.

Senator Blois: Can the Canadian Government take any definite action, except in conjunction with the government of the United States?

Mr. Anderson: None at all; we are entirely in their hands. There is no legal way we can stop this if the Americans wish to go ahead, none at all; we are entirely in their hands. There is no legal way that we can stop this if the Americans wish to go ahead.

Senator Blois: If it is agreed that it is international waters, can the United States take care of it, then?

Mr. Anderson: No, sir. If it were international waters, we have no more rights than anyone else. We could just point out the fact that we think they are a threat to us. They could use their own waters, this side of the boundary line.

Senator Blois: That would not interfere with international regulations?

Mr. Anderson: No it would not, to the best of my knowledge, although I wonder how they are getting around Turn Point.

Senator Blois: That is what is in my mind, how they could do it.

Mr. Anderson: I do not know. Perhaps they would have to use route "B" entirely. I think that in order to use route "A" they must come into our waters.

Senator Langlois: This is a very technical question. Do you know whether or not, under American law, the passage would be considered as an international voyage or a domestic voyage?

Mr. Anderson: I understand, and I may be wrong, it is more a guess than a statement of fact, that it would be

domestic waters if they are travelling between these points.

Senator Langlois: So they could pull the ships out, at that rate, if they wanted to?

Mr. Anderson: Yes.

The Chairman: Are there any further questions? Thank you, Mr. Anderson.

Honourable senators, we propose to hear now Captain Cook.

Senator Langlois: Mr. Chairman, before you hear Captain Cook, I would like to mention that he comes here quite unprepared this morning. He happens to be in Ottawa in connection with some other business. It was only when I sat in my office that it came to my mind that he should be invited to appear before this committee.

The Chairman: Captain Cook is chairman of the British Columbia Coast Pilots, from Vancouver.

Captain J. B. Cook, Chairman, British Columbia Coast Pilots, Vancouver: Mr. Chairman and honourable senators, first of all, I would like to say that Mr. Anderson has given you, in my opinion, quite a complete and very accurate picture of the situation we are faced with in the Puget Sound area. I think practically everything he said is quite true.

There is possibly one thing that we should deal with and that you gentlemen are probably not familiar with, the Oregon Treaty that established the international boundary between British Columbia and the coast of Washington. It guarantees the rights of shipping to Canadian and American ports. The Oregon Treaty is under question these days, as to whether the Americans are going to comply with it or not. We ran into this problem in connection with Roberts Bank.

I agree with Mr. Anderson that it is clear that the Americans are going to have to use, possibly, Haro Straits because you can see quite clearly that they can go to Cherry Point on two courses, with a much wider channel than if they went through the Rosario Straits in this area. Naturally, with a big ship of 200,000 tons, arriving at Cherry Point on a flush tide, they would have to come up here and turn around and go back.

Possibly the Oregon Treaty will have to be renegotiated at some time, because the Royal Commission on Pilotage states that 90 per cent of the shipping bound for Canadian ports crosses the Black line, it crosses from the Canadian side to the American side and back again.

This is the problem we are running into now near Roberts Bank, where there is a Canadian port. You can see that this is the apex of the border and Canadian vessels, or foreign-going ships with pilot, have to cross the apex to go to this port. They are telling us now that we are violating American territorial waters by crossing that apex into Roberts Bank. This is one of the problems we are faced with.

Mr. Anderson spoke about the larger, 100,000 and 200,000 ton ships. These ships are approximately 1,000 to 1,200 feet long. If you just stop the engines, they will carry on for ten or twelve miles before stopping. You can see what would happen in these areas here, if you had an engine failure. The ship would have to go ashore, because there is no way in which you can steer it to stop it. Of course, the same situation has developed over here. If you had an engine failure, the ship would just have to go ashore.

We have had a number of what I suppose should be considered as major accidents in the last six or seven years. Puget Sound pilots had a collision down here. Another one went ashore here, off Smith Island. A Japanese ship and a Danish ship had a collision. There was a collision between here and Active Pass, between a Russian ship and a ferry. A ship hit the point here not very long ago. There were quite a number of collisions. So, in my opinion, it would have to be expected that there would be accidents.

Senator Isnor: Those would be very much smaller ships?

Captain Cook: This is true. They are much smaller ships than the ones involved here.

Senator Isnor: Is it absolutely necessary for them to have the very large type of tanker that Mr. Anderson mentions?

Captain Cook: This is for economy purposes. That is about the only thing you can say for it. I do not think it matters how you construct a tanker, or how much money you spend on it, if the ship is going to go ashore it is going to spill. I do not know of a ship you could build which would not be subject to this type of accident. Even if it has double bottoms, even if it has double hull plating and everything else, if it does have a collision it is going to have a bad spill. You cannot stop a ship like this.

Senator Isnor: We were faced with the same situation on the east coast, in exploring for oil on Sable Island when the Shell people were coming into Halifax harbour. It is easier to navigate there than it is on the west coast, I would judge from what Mr. Anderson has had to say. Halifax harbour is easier to enter.

Captain Cook: I am not an expert in navigation on the east coast. I imagine they have their dangers and that they are probably equal to ours. The conditions are different, but in the long run they probably run an equal risk.

I might also add that they say they are going to put in all these modern navigational aids that will assist the ships; but we must remember that the two Standard Oil tankers that collided at San Fransisco Bay bridge a short time ago were operating under Coast Guard radar control, and that did not seem to be a deterrent. They did not have pilots on board. Under American laws, such as the one they are proposing here, they were operating on certificates, but did not have to carry pilots. I am not saying that it was because they did not have pilots on board that the collision occurred. They were probably very competent people who were commanding both those ships, but it did prove that the technical aids that were available to the ships were insufficient to prevent a collision.

Senator Langlois: Captain Cook, you have made reference to a collision between a ferry and a Russian ship when they were going through Active Pass. You also made reference to the size of the ships involved in this collision. How does Active Pass compare to any of the passes that these proposed routes would go through? Is it not a fact

that Active Pass is a much narrower pass than any that could be travelled on any of these alternative routes?

Captain Cook: This is quite so; Active Pass, as you can see, has two very sharp turns, which does not apply here. There is, of course, a much narrower route. We have discussed this with the Puget Sound pilots on an informal basis. Those pilots with whom I have spoken certainly prefer to use Haro Strait. In fact, they do not have any intention of using Rosario Strait unless legislation makes it necessary. I agree with them; in their position I would also use Haro Strait. It is very easy to see that arriving at this point en route to Cherry Point an easy wide swing will bring the ship to the berth. This is preferable to going to Alden Bank or somewhere up here, where a wide turn would be involved. In view of the foggy periods experienced at this time of year, the pilots prefer the wider channel.

There has been discussion with the American pilots of a proposal to route the loaded tankers in through Haro Strait and the empty tankers out through Rosario Strait so as to avoid their meeting.

Senator Langlois: What is the width of the channel where the collision took place?

Captain Cook: It is approximately two cables, or a little less.

Senator Langlois: Will the American tankers be subject to compulsory pilotage?

Captain Cook: No, not under present legislation. American ships can travel between American ports without pilots. It is similar to a Canadian cruise ship travelling to Alaska from Canada; they do not take pilots. These ships would not require pilots.

The Chairman: Do you wish to make a further statement, Captain Cook?

Captain Cook: Naturally, we do not oppose marine traffic in general. It is part of our occupation, but as long as ships navigate there will be accidents; we will never prevent them. So long as there is human error coupled with mechanical error there will continue to be accidents. There is no doubt about it. It would be very nice to be able to say we could prevent them.

The Chairman: Does that apply to vessels with or without pilots?

Captain Cook: With or without pilots, yes, sir. I would like to think there would be fewer accidents with pilots.

The Chairman: What is the committee's wish in regard to this motion?

Senator Argue: While I am not familiar with the usual procedure, it seems that we could make a brief statement that we have heard evidence which leads us to a certain conclusion. Recommendations to the Senate could be included.

The Chairman: Senator Argue, we were to discuss this; the motion was for further consideration. We have had as witnesses Mr. Anderson and Captain Cook. What is your wish and pleasure?

Senator Argue: With regard to further witnesses?

The Chairman: Right.

Senator Argue: I would be happy to have more. I agreed to have one called, and he has appeared.

Senator Langlois: In this connection, Mr. Chairman, I informed the committee recently that Mr. Sharp has expressed the wish to appear before the committee in this respect. However, I have been unable to ascertain from him a date that would be convenient. On the other hand, another witness has been suggested to me, one Mr. Humphrys, of the Department of Energy, Mines and Resources. I am told he is one of their advisers and an expert in this matter. I am not insisting that he be called; it is just a suggestion.

The Chairman: Is it the wish of the committee that we adjourn to the call of the Chair, and that Senator Langlois and Senator Argue will try to arrange for further witnesses? Shall we adjourn this meeting until Thursday at 10 o'clock?

Senator Argue: Yes—I might add, with a little flexibility. If the chairman does not feel that is the best date, he should have the authority to set it at the most appropriate time. We should meet as early as possible, hear whatever other witnesses we have, and then deal with the motion.

Senator Burchill: I think we have had enough evidence to convince us that as far as Canadians are concerned this is not the wisest route. We also have evidence that the Government is doing all it can, apparently to prevent it. Discussions have taken place with United States officials in an attempt to point out to them that it is a dangerous proceeding. We can only support those efforts. What is the reason for the adjournment?

The Chairman: Senator Langlois has indicated that Mr. Humphrys of the Department of Energy, Mines and Resources might appear.

Senator Langlois: It was merely a suggestion.

The Chairman: I am in the hands of the committee.

Senator Blois: What further evidence is necessary?

The Chairman: Another factor is the fact that the House of Commons committee has presented its report opposing the suggestion of this route.

Senator Burchill: I do not know what more we can do than support what has already been done.

Senator Blois: I do not know either.

Senator Argue: I suggest that the steering committee consider my motion, and perhaps modify it to some extent, in the light of the evidence and the action of the Government. The steering committee would report to this committee its consideration as to the terms of the motion we might pass in this committee, and then let the committee itself deal with it. We are a little up in the air now. We either deal with the motion in the words in which it now stands, or we do not deal with it. Someone should do something about it. I do feel that the proposition in the motion has been fully

supported here, and that we should take action in that regard.

The Chairman: Is it the wish of the committee, then, to refer this matter to the steering committee for further consideration of the wording of the motion?

Senator Blois: Mr. Chairman, certainly not the words "in very close contact with the House of Commons". It seems to me that it should be a joint committee. Perhaps we should work a little more closely with the other place.

The Chairman: Well, Mr. Anderson has presented his report.

Senator Blois: I know he has, but are we going to follow that definitely? That is the point I wish to raise.

Senator Langlois: I suggest that the committee study the bulk of the report of the House of Commons committee, and then the wording can be redrafted. It would be in the hands of the committee after that, and I suggest that we adjourn to the call of the Chair. The steering committee will be reporting to you, and you will then be able to call a meeting of the main committee, as you see fit.

Senator Burchill: Once you arrive at satisfactory wording, it will take a short time for us to consider it.

The Chairman: Is that agreeable?

Senator Argue: I think Senator Macdonald is on the steering committee, so it is a fairly representative committee.

The Chairman: Is that agreeable?

Hon. Senators: Agreed.

The Chairman: The meeting is now adjourned to the call of the Chair.

The committee adjourned.

Published under authority of the Senate by the Queen's Printer for Canada

Available from Information Canada, Ottawa, Canada.

CA1 YC 19
-T62

THIRD SESSION—TWENTY-EIGHTH PARLIAMENT

1970-71

THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING SENATE COMMITTEE ON

TRANSPORT AND COMMUNICATIONS

The Honourable J. CAMPBELL HAIG, *Chairman*

No. 8

WEDNESDAY, JUNE 23, 1971

Complete Proceedings on Bill C-246,

intituled:

"An Act respecting pilotage"

LIBRARY
JUL 28 1971
UNIVERSITY OF TORONTO

REPORT OF THE COMMITTEE

(Witnesses:—See Minutes of Proceedings)

24141—1

STANDING SENATE COMMITTEE ON
TRANSPORT AND COMMUNICATIONS

The Honourable J. Campbell Haig, *Chairman*

The Honourable Senators:

Argue	Macdonald
Blois	(*Cape Breton*)
Bourget	*Martin
Burchill	McElman
Connolly	McGrand
(*Halifax-North*)	Michaud
Denis	Molson
*Flynn	Nichol
Fournier	O'Leary
(*Madawaska-*	Petten
Restigouche)	Prowse
Haig	Rattenbury
Hayden	Robichaud
Isnor	Smith
Kinnear	Sparrow
Langlois	Welch—(26)

**Ex officio member*

(Quorum 7)

Order of Reference

Extract from the Minutes of the Proceedings of the Senate, June 23rd, 1971:

Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Lang, seconded by the Honourable Senator Giguère, for the second reading of the Bill C-246, intituled: "An Act respecting pilotage".

After debate, and—
The question being put on the motion, it was—
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator McDonald moved, seconded by the Honourable Senator Denis, P.C., that the Bill be referred to the Standing Senate Committee on Transport and Communications.

The question being put on the motion, it was—
Resolved in the affirmative.

Robert Fortier
Clerk of the Senate

24141—1½

Minutes of Proceedings

Wednesday, June 23rd, 1971.
(8)

Pursuant to adjournment and notice the Standing Senate Committee on Transport and Communications met this day at 2:05 p.m. for the consideration of Bill C-246, intituled: "An Act respecting pilotage".

Present: The Honourable Senators Haig (*Chairman*), Argue, Burchill, Kinnear, Langlois, Martin, McElman, McGrand and Smith—(9).

Present but not of the Committee: The Honourable Senators McDonald and Lang.

In attendance: Mr. Pierre Godbout, Assistant Law Clerk and Parliamentary Counsel.

Upon motion of the Honourable Senator Langlois, it was *Resolved* to print 800 copies in English and 300 copies in French of these Proceedings.

The following witnesses were heard:

Mr. R. R. Macgillivray, Director, Marine Regulations Branch, Department of Transport;

Mr. Raynold Langlois, Counsel, National Association of Canadian Marine Pilots;

At 2:35 p.m. the Committee adjourned.

At 2:50 p.m. the meeting resumed and Mr. Langlois continued with his evidence.

The following witnesses were heard:

Mr. Alain Lortie, representing the Federation of St. Lawrence River Pilots;

Captain P. R. Hurcomb, General Manager, Dominion Marine Association;

Mr. Jean Brisset, Q.C., representing "The Shipping Federation of Canada" and "The Canadian Chamber of Shipping".

In attendance:

Captain A. D. Latter, Superintendent of Pilotage, Department of Transport.

Mr. A. Taylor, Chairman, Pilotage Task Force, Department of Transport.

After discussion and upon motion, it was *Resolved* to report the said Bill without amendment.

At 3:00 p.m. the Committee adjourned to the call of the Chairman.

ATTEST:

Aline Pritchard
Clerk of the Committee

Report of the Committee

Wednesday, June 23, 1971.

The Standing Senate Committee on Transport and Communications to which was referred Bill C-246, intituled: "An Act respecting pilotage", has in obedience to the order of reference of June 23rd, 1971, examined the said Bill and now reports the same without amendment.

Respectfully submitted,

J. Campbell Haig,
Chairman

The Standing Senate Committee on Transport and Communications

Evidence

Wednesday, June 23, 1971

The Standing Senate Committee on Transport and Communications, to which was referred Bill C-246, respecting pilotage, met this day at 2 p.m. to give consideration to the bill.

Senator J. Campbell Haig (*Chairman*) in the Chair.

The Chairman: Honourable senators, I see a quorum and I call the meeting to order. We have before us Bill C-246, an act respecting pilotage. We have as witnesses this afternoon Mr. R. R. Macgillivray, Director, Marine Regulation Branch, Department of Transport, Captain A. D. Latter, Superintendent of Pilotage, Department of Transport, and Mr. A. Taylor.

To be heard from later are Mr. Raynold Langlois and Mr. Alain Lortie, both of the National Association of Canadian Marine Pilots. Further, I understand that Caption P. R. Hurcomb, as General Manager, would like to speak on behalf of the Dominion Marine Association.

I would now ask Mr. Macgillivray to proceed.

Mr. R. R. Macgillivray, Director, Marine Regulation Branch, Department of Transport: Thank you, Mr. Chairman. Honourable senators, I do not think it would be profitable for me to occupy very much of your time explaining the bill after the explanation that was given in the chamber yesterday. Briefly, it has been pointed out that pilotage in Canada was falling into a state of rather bad disorganization some nine years ago, and a royal commission was appointed to look into the matter. Although that royal commission has not concluded its work, it has presented its general report and is following it with detailed reports on various areas. The general report covered Canada as a whole. The detailed reports have covered the Pacific coast, the Atlantic coast and the St. Lawrence River area. There is one detailed report still to come which will be covering the Great Lakes area. In view of this, we felt that there was enough in what the commission had reported on already to allow us to proceed with drafting the legislation.

The bill was considered at some length in the committee of the other place and a number of amendments were made, as will appear from the bill before you.

Briefly, the bill provides for the establishment of four pilotage regions. They are: the Atlantic region, which covers the four Atlantic provinces plus a small portion of the province of Quebec on the north shore of the Bay of Chaleurs; the Laurentian region, which covers the St. Lawrence River and Gulf from that point upstream to Montreal, to St. Lambert lock; the central region, which covers the waters of the St. Lawrence River above Montreal and all the waters of the Great Lakes and the connecting waters; and the Pacific region, which covers the Canadian waters of the province of British Columbia.

These authorities have the objects of establishing, operating and administering an efficient and economic pilotage service in the interests of safety. They will be proprietory corporations under Schedule D of the Financial Administration Act, and excepting that in the central region there is provision that the Governor in Council may direct that the pilotage authority will be a subsidiary corporation of the St. Lawrence Seaway Authority, they will have all the appropriate powers to own lands, buildings, boats, et cetera, necessary to run a pilotage service. They will consist of at least three but not more than seven members.

The principal new feature of pilotage, as introduced in this bill, is that we do away with the system that now exists of compulsory pilotage payments and substitute for it compulsory pilotage. The compulsory payment system persists in most of the pilotage districts in Canada. This is a provision whereby a ship, although it does not have to take a pilot, must pay pilotage dues. There is a long history of that which I will not go into. However, the general effect is that ships that are subject to compulsory payment do take pilots.

In place of that we are proposing that the regional authorities will be able to designate waters as compulsory pilotage areas, and, if they should fail to do so, this may be done by the Governor in Council.

In these areas every ship, unless it is exempted, will have to be under either the conduct of a licensed pilot of that pilotage authority or the conduct of an officer of that ship who holds a pilotage certificate demonstrating that he has the appropriate local knowledge in order to handle his ship in those waters.

Up until now, in the few areas where we have had compulsory pilotage, the ships that have been exempted from taking a pilot have been exempted on the basis of their flag and their trade. That is to say, in the narrow waters of the Great Lakes—in other words, in the St. Lawrence River above St. Regis at the international boundary, in the Detroit and St. Clair rivers, the St. Marys River and Canal and the Welland Canal—in those areas pilotage is compulsory and salt-water ships coming in must take pilots, but the Canadian and U.S. Great Lakes ships are exempt from this requirement on the

basis of their nationality and the trade they are engaged in—that is, the trade within the Great Lakes and as far down the St. Lawrence river as Seven Islands.

Instead of exempting ships on the basis of flag and trade, under this bill they will be exempt only if the officers of the ship have demonstrated, by acquiring a pilotage certificate, that they have local knowledge of these waters. This is a point that has been objected to by the Dominion Marine Association representing the owners of those ships. But we do feel that it is more logical to exempt them on the basis of the qualifications of the persons on the bridge rather than on the basis of the flag and trade the vessel is in.

The existing pilot licence issued under the Shipping Act will continue in force, and new pilot licences will be issued by the pilotage authority to those applicants as they come along, under the regulations. Until now, in most pilotage districts pilots have been in the category of private entrepreneurs; that is to say, they are not employees of the pilotage authority. Under the present legislation the pilotage authority exercises certain control over pilots. It licenses them and has some control over the manner in which they attend to their duties. It arranges to despatch them to ships on a tour de rôle basis. It operates pilot boats, collects the money owing to them and disburses it to them. In addition, it has the regulation-making power to establish pilotage dues by by-law approved by the Governor in Council. But, as I say, except in a few areas in parts of the Great Lakes, the pilots are not employed by the pilotage authority; they are controlled, but not employed.

Under the new arrangement, a pilotage authority will have the power either to engage the pilots as employees of the authority and then despatch them to ships, or to enter into a contract with a corporation representing these pilots for the provision of pilotage services and for the training of apprentices, as appropriate, in any area where the majority of the pilots indicate that this is the system they would prefer.

There are provisions in the bill for the suspension or cancellation of pilot licences where they fail to meet qualifications, and we foresee a periodic review of the competence of pilots, firstly, of their medical fitness and, secondly, of their keeping up to date in the use of navigational equipment, etcteera. The same, of course, will apply to the holders of pilotage certificates.

Pilotage authorities have the regulation-making power, as I said earlier, to prescribe areas that will be compulsory pilotage areas, to prescribe classes of licences and certificates, examination procedures, and to limit the number of licences, and so on. These regulations are all subject to the approval of the Governor in Council.

In the case of those establishing compulsory pilotage rates and those prescribing qualifications for the holders of licences and certificates, prior notice must be published in the *Canada Gazette,* and if any objection is made, a hearing will be held. As a result of the hearing, the pilotage authority may be required to vary the regulation before it is approved by Order in Council. The hearing in the case of pilotage rates will be by the CTC.

While the pilotage authorities will establish the qualifications respecting local knowledge and skill, the Governor in Council will make the regulations establishing minimum qualifications respecting the navigational certificates they must hold, such as master or mate, and the sea-time they must have put in, the age and health of the applicant.

As regards the Great Lakes, at the present time, the pilotage system there is a joint pilotage system operated by the Department of Transport and the United States Coast Guard under a memorandum of arrangements entered into between the Minister of Transport and the Secretary of Transportation in the United States. The intention is that this will continue; that is to say, that there will continue to be a joint pilotage system, although there may be changes in the manner in which it is run. But the bill provides that such a system may be maintained.

I think, Mr. Chairman, that gives the general gist or outline of what is in the bill. There may be one or two points of detail I should refer to that have been brought up since the bill was considered in the committee of the other place. We have had an inquiry from the Shipping Federation of Canada, which is the organization representing the overseas owners—the owners of ships that come into Canada from outside—as well as from other Canadian owners.

The people who, for the most part, in Canada use the pilotage service have expressed praticular concern about a feature of the Great Lakes pilotage system that we now have, and that is that in the Great Lakes system, as I have mentioned, we have certain designated waters that are compulsory, the narrow waters of the adjoining rivers and canals. In the other waters of the Great Lakes pilotage is not compulsory, but every ship must have on board, not necessarily on the bridge or in charge of the watch, either a pilot—one of the licensed pilots I have mentioned—one of the ship's officers who has demonstrated certain minimum qualifications, and these are quite minimal. He has to demonstrate that he has a knowledge of the English language so that he may communicate with our coastal stations over the radio; that he has the qualification to operate the radio telephone; that he has knowledge of the "rules of the road" for the Great Lakes, which are the special navigational rules, the steering and sailing rules, etcetera, that apply in the Great Lakes and that are somewhat different from the international rules; and that he has been into those waters for a certain number of trips. The certificate that we give to those from these foreign ships is called a "B" Certificate. The Shipping Federation has expressed concern that, as a result of an amendment made in the committee of the other place, it might not be possible for us to issue these certificates. However, I am satisfied that under the provisions of clause 14(1)(k) it is possible for us to make regulations that will recognize that a ship may be operated in these open waters of the Lakes under certain restrictions, if it does not have a pilot or the holder of a pilotage certificate in charge of the watch. One of these conditions can be that they have among the members of the ship's complement a person such as I have described.

I hope that this will reassure the Shipping Federation of Canada.

In addition, since the bill was passed by the other place we have had discussions with representatives of both the National Association of Canadian Marine Pilots and the Federation of St. Lawrence River Pilots, which are the two organizations that between them represent, I should think, every pilot in Canada. We have had representations from them indicating their concern, in the first place, that a pilotage authority might, under pressure from other interested parties, fail to designate a particular stretch of water as a compulsory pilotage area, or might take what is an existing compulsory pilotage area and declare it to be no longer such. They are concerned this might happen in a case where it should not happen; that is, that such a decision might be made against the public interest.

The minister has indicated, and has authorized me to say, that he is satisfied that the Government would not allow any pilotage authority to bow to such pressure from shipowners or anyone else who might not want it to be declared compulsory, in making a decision that would not be in the public interest on what should or should not be a compulsory pilotage area.

Specifically, we recognize that the royal commission, in recommending, as it did, that certain areas be compulsory areas, did not go far enough. For instance, I do not think anyone would doubt that Chedabucto Bay should be a compulsory pilotage area, and the royal commission did not so recommend. Mind you, conditions have changed since they studied that. Similarly, they did not recommend that a certain portion of the St. Lawrence River below Quebec City should be a compulsory area, but, again, conditions have changed, and there is an oil refinery in Quebec City now, and there is going to be a substantial oil trade in there. These are the sort of places concerning which we can say we do not foresee the pilotage authority declaring not to be a compulsory pilotage area.

Another point that the pilots' organizations expressed concern on was that under the provisions of clause 14(1)(b) the pilotage authority, in prescribing the ships or classes of ships subject to compulsory pilotage, might furstrate the general intent of the bill by exempting ships or classes of ships that really should not be exempt. Again, the minister is prepared to declare that the Government just would not allow the intent of the bill to be frustrated in this way.

It should be made clear, though, that this would not prevent the granting of exemptions, for instance, to a ferry vessel trading between Puget Sound and Victoria, B.C. Such vessels now trade there regularly, day in and day out, and it is obvious that their officers know the waters and do not need to take a pilot.

Generally speaking, the minister would like to emphasize that this bill must be looked at in context with the recent Government legislation in the field of safety of navigation as a means of preventing pollution. The Arctic Waters Pollution Prevention Act and Bill C-2, which was passed on March 31 as chapter 27 of the Statutes of this session, are the two other pieces of legislation that must be coupled with this as Government legislation in the field of marine safety, and having as one of the principal objectives the prevention of pollution by preventing accidents.

I think that is all I wish to say, sir.

The Chairman: Thank you, Mr. Macgillivary. Captain Latter, would you care to say anything on this bill?

Captain W. D. Latter, Superintendent of Pilotage, Department of Transport: No, sir. I will answer any questions that may be asked of me.

The Chairman: Mr. A. Taylor?

Mr. A. Taylor, Chairman, Pilotage Task Force, Department of Transport: No, sir.

The Chairman: We will now hear from the National Association of Pilots, Mr. Raynold Langlois and Mr. Alain Lortie.

Mr. Raynold Langlois, Counsel, National Association of Canadian Marine Pilots: Mr. Chairman and honourable senators, I would like to point out that my colleague Mr. Alain Lortie represents the Federation of St. Lawrence River Pilots, but all the pilots across Canada speak with one voice. Probably we shall have two tones in a minute, but in substance it is one voice.

I must say that the pilots are greatly relieved by the last statement made by Mr. Macgillivray on behalf of the Minister of Transport. I might also take this opportunity, if I may, to confirm something that the Leader of the Government in the Senate said this morning, that he was intrumental in arranging a meeting between the Minister of Transport and Mr. Lortie and myself in order to discuss the Government policy on the bill and certain intentions we thought were not explicit in the bill. I am sure this statement made by Mr. Macgillivray, as a result of this meeting, will help to reassure those we represent.

The bill, as presented in its original form in the other place, had many failings, and we, as representatives of the pilots, made various suggestions to the committee about amendments that should be made, and many amendments were in fact made to the bill. However, we find that the bill as it presently stands still contains a major failing in that, although it is a pollution control instrument, although it is a bill that creates compulsory pilotage and therefore one should expect that the general rule would be that all ships plying in the dangerous waters of Canada that will be designated as compulsory pilotage areas will be subject in fact to compulsory pilotage, when one turns to the regulation-making clause, clause 14, which is probably the most important clause in the bill, one finds it weak in drafting. For instance, clause 14 (1)(b) reads:

> An Authority may, with the approval of the Governor in Council, make regulations necessary for the attainment of its objects, including, without restricting the generality of the foregoing, regulations
>
> (b) prescribing the ships or classes of ships that are subject to compulsory pilotage.

If I read the clause correctly, as drafted this could mean the vessels that will be subject to compulsory pilotage have to be named, have to be specified. The general rule, therefore, is that ships, unless they are specifically made to be subject to compulsory pilotage, will be exempt. It is like establishing a speed limit on a highway and then saying, "We will name the cars that have to respect it," instead of going the other way round and saying that ambulances and fire trucks will be exempt. Normally the exceptions are listed, not the general rule. In the op nion of the pilots, this clause could be construed by authorities as being an indication by the legislature to be as broad as possible in the exemptions.

When Mr. Macgillivray says that exemptions will be granted on the basis of the qualification of the person assuming the control of the vessel, he is referring, of course, to the issue of pilotage certificates in lieu of pilot licences. I reply that clause 14(1)(b) does not so stipulate; it does not speak of the qualifications of the person on the bridge. We are reverting in a much broader form, if I may say so, to the much criticized system of exemption under the old Canada Shipping Act, where ships were exempt on criteria of class or size and not on criteria of competence of the person actually navigating the vessel.

It is unfortunate that the bill is not drafted in order to say what type of situation would bring about an exemption. If we want to exempt ferry boats, warships, as is always done, hospital ships, Canadian fishing vessels, small Canadian registered vessels, why could we not have said it by using phraseology similar to that of section 346 of the Canada Shipping Act instead of using this broad language?

What also worries the pilots is that clause 14(1)(b) is very wide, but in the next paragraph, paragraph (c), there is another very wide power to waive compulsory pilotage. The bill does not say what is the difference between an exemption and a waiver. Some witnesses from the Department of Transport may explain that the waiver will be specifically for a vessel, will be granted in special circumstances and for a limited period of time. But what the pilots do not understand is, if this is the intent, that the waiver be granted in exceptional circumstances for specific vesels and for a limited period of time, why is this not specifically stated in paragraph (c) of clause 14(1)?

In our view, the other great failing of the bill concerns the status of the areas where, under the present legislation, there is compulsory payment of pilotage dues. What happens to these areas after enactment of this new legislation? In the other place we suggested that clause 15(4) be amended.

Senator Langlois: Mr. Chairman, if I might interrupt for a moment, I understand the minister is waiting to meet the pilots.

The Chairman: This meeting will adjourn for ten minutes while the pilots meet with the minister.

(A short recess)

The Chairman: Mr. Raynold Langlois, would you please continue?

Mr. Langlois: I would like to thank the members of the committee for having given us this recess in order that we might meet with the Minister of Transport. The meeting was very good. Before the recess I was about to complete my remarks. We pointed out that there was a failing in section 15(4) concerning the survival of the present licences and of the pilotage districts.

There were other points raised, but in the view of the assurances that we have now received from the minister, and the policy as expressed for the minister by Mr. Macgillivray, we recognize that this is badly needed legislation, and in view of the timetable of Parliament, it is important that the bill be adopted now, despite its imperfections, which can be corrected at a later date. Therefore the pilots will, under those conditions, support the bill as being good legislation.

The Chairman: Thank you. Has Mr. Lortie anything to say?

Mr. Alain Lortie, for the Federation of St. Lawrence River Pilots: I do not have much to say. I express my support for what Mr. Langlois has said. Again, on behalf of the federation I wish to thank you for allowing us the recess, and also the honourable Senator Martin for arranging the meeting.

Senator Martin: The members of the committee did that, not I.

Mr. Lortie: I want to say that we have appreciated the meeting with the minister, and also his frankness and directness. Our presence here this afternoon has been in the same spirit. We are not opposing this legislation. We want this to be made very clear. However, we think the bill, like any other piece of legislation, can be perfected, and it is in that spirit that we are making our remarks. We understand the timetable of the Government. We wish to express our support of the bill and also our intention of keeping a good eye on the legislation and of improving it, if at all possible, in the future. Thank you, gentlemen.

The Chairman: We will now hear from Captain Phillip Hurcomb of the Dominion Marine Association.

Captain Phillip Hurcomb, Dominion Marine Association: Thank you, Mr. Chairman. I will be very brief. My intention was simply to try to provide the committee with material which would indicate that the suggested amendments made by the pilots need not and should not be made. The situation has now changed. I take it that they are not pressing for the amendments they had mentioned, and that therefore there is no need for me to rebut them. Our end of the industry feels that this bill imposes a financial and other burdens on the industry. It is too bad, but that is the way it is. We will just have to live with it in some way. I will be very interested to know what assurances the Minister of Transport gave to our friends. He has given us no comfort or assurance of any kind.

Senator Martin: What kind of assurances do you want?

Captain Hurcomb: I hope that the assurances made to the pilots are not confirmed assurances. I am not sure

what they were, but I am of course, just joking. However, thank you for the privilege of allowing us to appear. We will try to make the legislation work.

The Chairman: We will now hear from Mr. Jean Brisset, Q.C., representing the Canadian Chamber of Shipping and the Shipping Federation of Canada.

Mr. Jean Brisset, Q.C., the Shipping Federation of Canada and the Canadian Chamber of Shipping: Mr. Chairman and honourable senators, as Mr. Macgillivray pointed out, the associations which I represent here comprise those that use the services of pilots, for the most part, in Canadian waters. Therefore they have a great interest in this legislation.

They supported the legislation as originally drafted and which came before the other place. They supported the legislation because it satisfied the two principal objectives on which all parties were in agreement, namely, decentralization of powers, as recommended by the Royal Commission on Pilotage, and flexibility at the regional level. Some of the amendments made in the other house have had the effect of reducing to some extent this flexibility, but we also are prepared to live with it.

However, we had great concern over one aspect of an amendment made in the other place, in relation to the requirements of pilotage on the open waters of the Great Lakes.

Mr. Macgillivray has explained that the Great Lakes were divided into two kinds of waters, waters called "designated waters," where pilotage is compulsory, and the open waters of the Great Lakes. When the Great Lakes pilotage was adopted in 1961, the Canadian Government did not consider that pilotage should be made compulsory.

I remember appearing before the committee 10 years ago when Brigadier Booth, who was then the assistant Deputy minister, explained his negotiations with the American Government, at which time he was able to induce the American Government to accept that Canada could issue to officers of foreign ships what is called a "B" Certificate, that entitled them to dispense with pilots on the open waters of the Great Lakes if the officer concerned had certain minimum qualifications. The United States Government did not want to issue those certificates, but accepted the fact that Canada could issue them, and they would recognize them. The certificates were issued to officers of foreign ships who were not Canadian citizens or landed immigrants under section 15(1). The issuance of pilotage certificates is limited to Canadian citizens or landed immigrants.

We had the statement of Mr. Macgillivray today that under section 14(1)(k) the Government or the pilotage authority could enact regulations entitling officers of foreign ships to meet the minimum requirements to navigate in the undesignated waters of the Great Lakes. However, we are not too sure as yet whether they would be issued a certificate or just given this permission by Canada so to navigate. If no certificate is issued, we wonder whether Canada can authorize these officers to navigate in American waters. This is all very well for Canadian waters; we have no doubt about this, in view of the statement made. But will the American Government or coastguard recognize Canada's action by way of regulation permitting these officers to navigate in the open waters of the Great Lakes? Perhaps when the time comes you may pursue this point with Mr. Macgillivray, and I suggest it respectfully.

This, honourable senators, completes my remarks. I repeat that from the start we have considered this to be a good bill. Even with some of the amendments we still consider it to be a good piece of legislation, which will improve the existing situation.

The Chairman: Thank you, Mr. Brisset. Are there any further witnesses to be heard before I ask the question? Are there any further questions by the committee of any of the witnesses?

Is there a motion to report the bill without amendment?

Hon. Senators: Agreed.

The Committee adjourned.

Published under authority of the Senate by the Queen's Printer for Canada

Available from Information Canada, Ottawa, Canada.

Publications

CA1 YC 11
-73



THIRD SESSION—TWENTY-EIGHTH PARLIAMENT

1970-71

THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING SENATE COMMITTEE ON

TRANSPORT AND COMMUNICATIONS

The Honourable J. CAMPBELL HAIG, *Chairman*

No. 9

WEDNESDAY, JUNE 23, 1971

Complete Proceedings on Bill C-240,
intituled:
"An Act to amend the Post Office Act"

LIBRARY
JUL 28 1971
UNIVERSITY OF TORONTO

REPORT OF THE COMMITTEE

(Witnesses:—See Minutes of Proceedings)

STANDING SENATE COMMITTEE ON
TRANSPORT AND COMMUNICATIONS

The Honourable J. Campbell Haig, *Chairman*

The Honourable Senators:

Argue	*Martin
Blois	McElman
Bourget	McGrand
Burchill	Michaud
Connolly (*Halifax North*)	Molson
Denis	Nichol
*Flynn	O'Leary
Fournier (*Madawaska-Restigouche*)	Petten
	Prowse
Haig	Rattenbury
Hayden	Robichaud
Isnor	Smith
Kinnear	Sparrow
Langlois	Welch—(26).
Macdonald (*Cape Breton*)	

**Ex officio Member*

(Quorum 7)

Order of Reference

Extract from the Minutes of the Proceedings of the Senate, June 23rd, 1971:

Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Denis, P.C., seconded by the Honourable Senator Gélinas, for the second reading of the Bill C-240, intituled: "An Act to amend the Post Office Act".

After debate, and—
The question being put on the motion, it was—
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Denis, P.C., moved, seconded by the Honourable Senator Bourque, that the Bill be referred to the Standing Senate Committee on Transport and Communications.

The question being put on the motion, it was—
Resolved in the affirmative.

Robert Fortier
Clerk of the Senate.

24143—1½

Minutes of Proceedings

Wesnesday, June 23rd, 1971.
(9)

Pursuant to adjournment and notice the Standing Senate Committee on Transport and Communicatins met this day at 4:00 p.m. for the consideration of Bill C-240, intituled: "An Act to amend the Post Office Act".

Present: The Honourable Senators Haig (*Chairman*), Argue, Blois, Burchill, Denis, Kinnear, McGrand, and Smith. (8)

Present but not of the Committee: The Honourable Senator Cameron.

In attendance: Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel; Mr. Pierre Godbout, Assistant Law Clerk and Parliamentary Counsel;

Upon motion of the Honourable Senator Blois it was *Resolved* to print 800 copies in English and 300 copies in French of these Proceedings.

The following witnesses were heard:

POST OFFICE DEPARTMENT:

Mr. F. Pageau, Director of Postal Rates and Classifications;

Mr. Arthur Boughner, Director, General Finance and Administration;

Mr. R. D. Myers, Director, Postal Service and Standards.

After discussion, and upon Motion, it was *Resolved* to report the said Bill without amendment.

At 4:50 p.m. the Committee adjourned to the call of the Chairman.

ATTEST:

Aline Pritchard
Clerk of the Committee.

Report of the Committee

Wednesday, June 23rd, 1971.

The Standing Senate Committee on Transport and Communications to which was referred Bill C-240, intituled: "An Act to amend the Post Office Act", has in obedience to the order of reference of June 23, 1971, examined the said Bill and now reports the same without amendment.

Respectfully submitted,

J. Campbell Haig,
Chairman

The Standing Senate Committee on Transport and Communications

Evidence

Ottawa, Wednesday, June 23, 1971

The Standing Senate Committee on Transport and Communications, to which was referred Bill C-240, to amend the Post Office Act, met this day at 4 p.m., to give consideration to the bill.

Senator J. Campbell Haig (*Chairman*) in the Chair.

The Chairman: We have with us Mr. F. Pageau, Director of Postal Rates and Classifications, Mr. Arthur C. Boughner, Director General Finance and Administration, and Mr. R. D. Myers, Director, Postal Service and Standards Branch—all of the Post Office Department.

I will ask Mr. Pageau to explain the bill.

Mr. F. Pageau, Director of Postal Rates and Classifications, Post Office Department: Thank you, Mr. Chairman. Honourable senators, I would like to explain briefly the amendments that are proposed in Bill C-240. Basically, the purpose of the bill is two-fold: firstly, to provide the Post Office with sufficient revenue to proceed with changes that are necessary to be able to provide the Canadian community with the service that it is entitled to; and, secondly, to permit it to make executive and administrative changes that will correspond to the program of decentralization that is now going on in the Post Office—that is, to try to have decisions made where the action takes place. This explains the delegation of powers that the Postmaster General is to give to the regional managers and district directors who are faced with the day-to-day problems. This power that the Post Office is requesting is exactly what exists in other statutes of Parliament.

Basically, we are asking for approval to increase the first-class mail rates from 6 cents to 7 cents as of July 1, and to 8 cents as of January 1 next. We are also adopting a new weight structure which actually is an advantage over the existing system. Now we charge for each ounce. For example, up to 16 ounces we used to charge 16 times the rate for the first ounce. The cost to the Post Office does not increase in proportion to the increase in weight, so we are adopting the philosophy of other countries, and this is why mailers, for instance, of items over seven ounces will pay less than they pay at the present time.

We are requesting that the Postmaster General have the power to set the rate for heavy times of first-class mail weighing over one pound. The reason is that since we pay for air transportation for each ounce over each mile over which the item is carried, it is not equitable to charge the sender of a ten-pound item from Ottawa to Toronto, for instance, the same as would be charged from Montreal to Vancouver. Because of this anomaly in the rate structure we are losing profitable traffic to private contractors who are getting in and eroding our market. Thus we are trying to increase our share of the market and especially to try to recoup what we have lost to private competitors.

Another item concerns the books for the blind, the law only provides for books, and here what we are doing is conforming to the practice in the Universal Postal Union. So what we are asking is to confirm what actually takes place and what is mandatory in the international service—that is, special consideration throughout the world for mailings made by the blind.

Another item of importance I am going to deal with is that as of July 1, legislators, members of the House of Commons and members of the Senate, will have the right, wherever they are, to mail official correspondence, whether they are at home or whether it is addressed to their home, free of postage. This is a major change.

A further one is that government departments in future will have to pay for the use of the postal services just as do our best customers, under arrangements that will be determined later.

There is another change, and perhaps this is a technical question. It deals with the opening of the mail by the Customs. The Department of National Revenue will reduce the number of ports, and now an item of first-class mail coming in international mail cannot be opened except by the addressee. If the addressee resides at quite a distance from the port of Customs, he may give the Customs authorities the right, in writing, to open the mail rather than having to make a trip to do it.

This, in summary, is the purpose of the bill.

The Chairman: Mr. Boughner?

Mr. Arthur Boughner, Director General, Finance and Administration, Post Office Department: Mr. Chairman and honourable senators, Mr. Pageau has summed up the purpose of Bill C-240, and I do not think there is anything I can add to what he has said, but I should be pleased to answer any questions.

Senator Burchill: What was the deficit last year for the Post Office?

Mr. Boughner: The deficit last year was $120 million. That is the sum that was forecast for 1970-71.

Senator Burchill: What is forecast with the new rates?

Mr. Boughner: For 1971-72 there is a total here of $38 million, which would work out to a forecast in the vicinity of about $70 million.

Senator Burchill: You expect to cut it in two.

The Chairman: Are there any further questions?

Do I have a motion to report the bill without amendment, or would you like to go through it clause by clause?

Senator Smith: I think Senator Cameron had a question to ask.

Senator Cameron: I am going to be very critical of the postal services for the last two or three years, and while I think there has been some improvement in the last ten months or so, it still leaves much to be desired.

My first comment is that I can understand that the cost of everything is going up, but in Senator Denis' presentation in the Senate he referred to hydro companies and other big business organzations passing the cost on. I have been operating a business at under $2 million a year, and the last increase cost us another $6,000 for postal services. The increase of one cent on July 1 will cost us another $7,000; and the further increase of one cent on January 1 will cost us an additional $7,000. This is a substantial increase, $20,000 on that much of a business in about two years. While I sympathize with your need to obtain more revenue, this bears rather heavily on a relatively small organization, as distinct from the big corporations mentioned by Senator Denis.

On the other hand, you subsidized *Reader's Digest* and *Time* to the extent of about $2 million last year. To me this does not make sense. What answer do you have for that?

Mr. Pageau: On this sudden increase of one cent and two cents comparisons are odious, as we say. At the same time, when you think of the size of the wage adjustments we have had to make as a result of a Royal Commission, of the working conditions, and the need to modernize our equipment and to look to the future, if you compare the increase in postage costs with the general index of anything else, comparitively, it is still lower than it was in 1955 and 1956. As I think Senator Denis pointed out, our rates are much lower, for instance, than those of other major countries, such as the United States, Australia, Germany and France. We also have to pay additional costs for transportation and equipment, and especially wages. To meet the needs of the future we have to mechanize and modernize. In this regard there is the cost of introducing a postal code which will help reduce costs, so that the $75 million for mechanization must be considered in conjunction with the code.

What you have said about the cost to the small businessman is true, but compared with other costs that businessmen have, the postal costs are not greater. If you use percentages, yes, if you use a very low base; when a charge of five and six cents is increased by one cent it is a big percentage. I think the minister said in the house that 80 per cent of the users are businesses, and the choice is either to try to get the business community or industry to pay for the service they use, or do it through the process of general taxation. This is the choice the minister said he had to make.

Senator Cameron: I am not complaining so much about the increase in cost. I recognize a certain amount of this is inevitable. Nevertheless, there was a big fanfare within the last couple of months about next-day-delivery when you put mail in the blue boxes. This has worked in some cases, but it is still far from working well. I mailed an important letter in Vancouver on Monday morning to catch the collection between 10 and 11 for delivery in Toronto. It has not arrived yet. These things can happen. As Senator Kinnear remarked in the Senate, as an extenuation, there could be bad weather, or something like this, but this has not been the case in this instance. There could be other reasons.

The Chairman: It probably flew Air Canada!

Senator Cameron: I must say that the deterioration in the postal service in the last three years has been a disgrace. You have a long way to go to improve it. Morale is not good. When you get people like Mr. Houle, who fortunately was defeated, speaking for postal people, it is an insult to any intelligent Canadian. He said, "We are not interested in getting better service. We are only interested in getting all the money we can." If this is the attitude that governs your employees, it bodes ill for the kind of service we can anticipate.

Mr. Pageau: The very question you put was raised in the transportation committee of the other place. I think the Deputy Postmaster General, Mr. Mackay, said at that time that the Post Office does realize that this assured mail delivery is something honest that the Post Office is doing. It is no longer possible for the Post Office to process 75 per cent of the mail between the hours of five and nine and think we can ship it in time to arrive at its destination the next morning to be processed, sent to the station and to the letter carriers. This mail delivery is being introduced. You start with a city in this way, and eventually you will link all cities. This involves changing the whole working process of the post offices, tagging the mail, changing staff. More people will work during the day now instead of working during the evening. That is a question of industrial relations. We intend the program in two years to cover the main cities, and eventually to include their surrounding areas.

For the first time all arrangements and activities are concentrated on delivering the mail at the time we say, rather than saying the mail "might" make it. Depending on the volume, more than the assured mail might be delivered.

Senator Cameron: Do you think we have some reason to hope that it will improve?

Mr. Pageau: We have introduced quality control. We control whether the mail is dispatched and whether the office of destination takes delivery. It is the first time the system has been introduced, and we will not reach 90 per cent at the beginning. We have people watching

whether we meet our commitment to the public at the office of dispatch. I think we have met that commitment and are still making a tremendous effort. The whole management is determined to improve the service, not only for first-class mail, but overall.

Senator Denis: Is the service tested in some way?

Mr. Pageau: When it was introduced in Toronto the Canadian Press decided to test the Post Office. They mailed 12 letters from different parts of the country and 11 were delivered within the time limit. There was a reason for the delay of the twelfth. Many of our mailers are now conducting tests in conjunction with us.

Senator Smith: The witnesses agree that we experience examples of the very worst type of service. However, we also have examples of the very best and almost unbelievably good service. For your satisfaction and in no other particular reason, I will tell you of one experience. I live in a small town in Nova Scotia 100 miles south of Halifax. The postmaster called me in when I went to get the mail and showed me two bundles of mail from Montreal postmarked at 1 a.m. that day. They were in the mail boxes in that town at 9 a.m. on the same day. He told me this was not exceptional. He was referring to the new truck service along the south shore of Nova Scotia, which has revolutionized the whole service. When my wife mails a letter in my home town in the evening I receive it here at nine o'clock. I get my Halifax newspaper around four or five o'clock every day.

I can tell you of many good experiences. I have had some bad ones also, but Senator Cameron has taken care of that part of it. I am hopeful that the service will be better and more regular. However, you will never beat fog as far as air transportation is concerned.

Mr. Pageau: We have the Director of Postal Services and Standards with us. He can vouch for the fact that the whole post office management here and in the field is concentrating on the need to restore the confidence we have lost. We have to restore the credibility in the Post Office.

Senator Cameron: Up until three years ago I used to receive mail from my western office, mailed at five o'clock the night before, here in Ottawa before noon. In the interval, up to just recently, it has taken from four to five days, and in the last month it took eight days for a letter to get from the Minister of National Defence on Elgin Street to my office. Obviously something peculiar went wrong. Your blue box service has resulted in quite an improvement, but you have a long way to go yet.

Mr. Boughner: We recognize that you are quite correct. We in the Post Office consider that the assured mail was a step in the right direction. We are running a quality assurance check on this system to ensure that we do reach a standard of service acceptable to the public.

Senator Kinnear: It is all very well to refer to the great service between cities on the main line from Halifax to Vancouver. What about those off the main line, in such a very busy area as Niagara, well populated, with several smaller cities? Great delay is experienced in the mail there. My mail takes three or four days from here to my home in Port Colborne. It only has to stop once, at Toronto.

When representatives of the Post Office appeared before another committee I asked this question. They replied that the delay was in Toronto because it was so overcrowded, with insufficient space to work. Such a condition can be tolerated only so long, then more space must be found to take care of the volume of mail to be sorted. Has anything been done in that area?

Mr. R. D. Myers, Director, Postal Services and Standards Branch, Post Office Department: We are working on that very hard at the moment. We are in the process of developing a whole new sortation process, including buildings and mechanized equipment, for Toronto. Most of this should be in place by about 1974.

Senator Kinnear: That is too long to wait for a busy area.

Mr. Myers: In the meantime, these out-of-the-way places, if I can use that expression...

Senator Kinnear: We think that it is Ottawa that is out of the way.

Mr. Myers: We will be dealing with this program very shortly.

The Chairman: Are there any further questions?

Senator Kinnear: I would like him to finish, please.

Senator Denis: It would mean that, in the case of the assured mail service, a lot of the mail would be handled during the day, so at night it would be less voluminous and there would be a greater chance that a letter to Senator Kinnear would reach him in time. When you mail your letter on Friday night, there is no mail on Saturday, and sometimes Monday is a holiday, so there are four days already gone.

The Chairman: Mr. Myers, would you finish answering Senator Kinnear?

Mr. Myers: As to the Niagara Peninsula, that particular area is due—I cannot remember the date, but it is not very far off—for the assured mail program. At that time the system should take care of the kind of delay the senator speaks of. I am not going to say it will be 100 per cent perfect on the day we turn it on, but it is in the works.

Senator Kinnear: Thank you. I hope it will, because I receive so many complaints about it. I remember asking at a particular time whether you were going to do it by truck or how, but maybe it is a secret process you are going to use. I really think that that area deserves prompt attention.

Senator Cameron: May I ask a question about the five-day delivery? This was one of the worst mistakes the Post Office made, and I put the blame squarely on Mr. Kierans and his advisors. Is there any thought of restor-

ing six-day mail service in the near future? If one wishes to mail a letter for a reasonably assured delivery on Monday morning, you have to get it into the mail before 4 o'clock on Thursday night. This does not make sense. I am speaking now of western Canada.

Mr. Myers: There is no thought, at least at the moment, of reintroducing six-day delivery service. There are probably two or three factors, one of which is that this costs a lot of money, probably in the order of $15 million.

Senator Cameron: It costs a lot more than that to the business community, because they have not got it.

Mr. Myers: I am not at all sure about that. The business community, by and large, can rent a box and get the mail if they must have it. It is surprising how many people in the country really agree with the five-day delivery service.

Senator Cameron: It is surprising how many people in the country have switched their business from the postal service to the facilities of the Greyhound, if they want a letter to be delivered at a certain time, all the time. Many firms in Calgary and Edmonton are doing the same thing. So you are losing money, and you are going to lose more money.

Mr. Myers: I do not know whether that is altogether due to the withdrawal of the Saturday service.

Senator Cameron: It is a big factor.

Senator Smith: This interests me, but I do not wish to argue with my friend Senator Cameron. In my experience, in the case of people you do business with—I do not know about the small towns on Saturday—certainly, when I walk down to the business district of Ottawa on a Saturday, I do not see anybody but the janitors. So what is all this about business needing the six-day service? If you are talking about people wanting mail service or wanting to work on their mail, outgoing or incoming, they can send mail out if they wish, but I do not see that anybody works on a Saturday any more. Is that a valid argument? I always assumed that was the reason.

Mr. Myers: I think the question is one of delivery. The Post Office, of course, works over the weekend. Mail is being processed and transported to the delivery office. There is no question of our simply stopping the processing of the mail over the weekend. On the question of delivery, if one has to have delivery on Saturday there are always boxes available. I do not see that the alternative services, such as Greyhound, offer anything better than this. They certainly do not deliver to the business firm or home. Someone must go down to the bus depot and get it.

To sum up what I have said, there is no thought at this time of reintroducing the Saturday service.

Mr. Pageau: Senator Cameron raised a good question, that businessmen sometimes resort to several means and pay a fair amount of money to get a message on Saturday because they are not ready to mail at 3 o'clock. We are reorienting the Post Office's attitude to meet the new needs of business in the field of speedy communications.

The bus companies are not providing a service the same day. However, we are already looking into the matter of speedier communications. We know that this is a new requirement, and our competitors are thriving on this business. They skim the milk and we have to go everywhere, to where there is perhaps no money. We are trying to get into this field. Several countries have done so already.

Senator Cameron: What times, after 4 o'clock on Thursday, can a letter be delivered to the main office, the Senate Post Office or the Besserer terminal so that one can be sure that it gets out? How many times does mail go out on Saturday, and does it go out on Sunday?

Mr. Myers: I cannot answer the question as to how many times it goes out.

Senator Cameron: Does it go out at all?

Mr. Myers: Yes.

Senator Smith: Are you talking about the Senate service?

Senator Cameron: No, because the Senate is closed. On Thursday you have to get a letter in before 4 o'clock to make sure that it gets out to Calgary. How many times is mail picked up at the Besserer Street post office or at the main post office on Saturday, and is it picked up on Sunday?

Mr. Myers: Yes. By and large, there would be one pick-up service on Sunday at the boxes in the city. On Saturday there are usually two.

Senator Cameron: Is it really two, or is it a question of hit and miss?

Mr. Myers: The main cities have two. I am not sure about Ottawa.

The Chairman: In Winnipeg we have two on Saturday and one on Sunday, at the letter boxes on the street.

Mr. Pageau: Mail is despatched in the usual way on available planes or highway service trucks. The post office will accept mail later.

Senator Blois: Are there any regulations as to what hours the post office opens for box holders? I have had a few complaints. For instance, on Saturdays post offices are often not open after 6 o'clock in the evening for people to get their mail from locked boxes.

Mr. Myers: The problem concerning locked boxes is perhaps one of the most confusing that we have to face. The general rule is to provide the hours of service that people require, if possible. The general rule is that in most offices throuhgout the country we leave the doors open for 24 hours unless there is a history of vandalism or other factors which mitigate against it. The general policy is to try to accommodate the service needs of the people in the particular location.

Senator Blois: But after six o'clock they are allowed to lock the door so that you cannot get to the box, is that correct?

Mr. Myers: They would be allowed to, yes.

Senator Blois: Many complaints arise from that, especially with regard to Saturdays. Even for myself, for example, when I am on vacation I find it very inconvenient if I miss the mail Saturday evening, by not getting there before six, because then I cannot get it until eight o'clock Monday morning. I am not complaining. I am just asking if it can be allowed.

Mr. Myers: As I have said, the policy is that we will leave them open for 24 hours, if we can.

Senator Blois: Surely, they could stay open later than six o'clock if they are only opening up at eight o'clock in the morning.

Mr. Myers: The problem is, if it is necessary to close them at all and, as a result, there is no staff on during the evening, then how do you get them locked after six o'clock?

Senator Blois: By the janitorial staff. That is the way it operates now in the places I am familiar with. The janitors are the ones who lock up. It is not the post office staff.

Mr. Myers: That would be true in only some cases.

Senator Blois: A number of cases. I have been told rather curtly by the postmaster that it is not their function to open and close doors for people. I do not think you realize how many people are affected by this, because, as a parliamentarian, I find myself, as most members of Parliament do, being questioned on this constantly, as if it were my fault. That is the reason I am interested in the answers.

Senator Smith: You need a new chamber of commerce, because in Liverpool we have had 24-hour service for years.

Senator Blois: Well, Liverpool is bigger.

The Chairman: Order, please! We will not have a discussion among the Maritime members of this committee. We are discussing the Post Office Act which applies across Canada. We will hear from Senator Argue.

Senator Argue: Mr. Chairman, I live in a small hamlet in Saskatchewan. For most of my life the mail service has been twice a week, delivered by CPR. Mail day was always, a big social event; everybody went to town on mail day. Then things improved. We now get mail six days a week and it is marvelous. It is so good that it has almost upset the social life of the community. Our delivery is by post office boxes; there is no rural delivery.

The question I wish to ask is whether there is any reason to believe that this kind of excellent service is not going to be maintained. Is there any move to cut it down? We are all happy with it; it is tremendous; it is the best we ever had. We never expected to have it half as good. We live out in a little hamlet and we get Saturday delivery. I come to Ottawa, the big city, and I do not get Saturday delivery, so we think it is marvelous and we hope it stays. Do you know of any reason why it should not continue?

The Chairman: Are there any further questions?

Senator Argue: Do I take it, though, that in a city like Ottawa you could have a post office box in the main post office and still get Saturday mail ? Is that correct?

Mr. Pageau: Yes.

Senator Argue: So it is the same service, but it just happens that out where I live we do not have door-to-door service and, therefore, it is in the box six days a week.

The Chairman: Are there any further questions?

Is there anything the witnesses wish to add to their submissions?

Senator Blois: Mr. Chairman, I do not think the mail is in the post office box six days a week. I know in my post office box I do not get any mail that is sorted after Friday afternoon. I do not think any mail is sorted on Saturday. I could be wrong. If so, I stand to be corrected.

Senator Smith: You are wrong.

Senator Blois: They do sort on Saturday?

Senator Smith: Yes.

Senator Argue: When we are in session.

The Chairman: Is it agreed that I report the bill without amendment?

Hon. Senators: Agreed.

The committee adjourned.

Published under authority of the Senate by the Queen's Printer for Canada

Available from Information Canada, Ottawa, Canada.

Government Publications

CAI YC 19
-T63



Third Session—Twenty-eighth Parliament
1970-1971

THE SENATE OF CANADA

LIBRARY
MAY 19 1972
UNIVERSITY OF TORONTO

STANDING SENATE COMMITTEE

ON

TRANSPORT AND COMMUNICATIONS

The Honourable J. CAMPBELL HAIG, *Chairman*

INDEX

OF PROCEEDINGS

(Issues Nos 1 to 9 inclusive)

24975—1

Prepared

by the

Reference Branch,

LIBRARY OF PARLIAMENT.

INDEX

Contents

Bills considered

C- 2 – An Act to amend the Canada Shipping Act Issues 2, 3, 4
C-186 – Canadian National Railways Financing and Guarantee Act, 1970 Issue 1
C-240 – An Act to amend the Post Office Act Issue 9
C-246 – An Act respecting pilotage Issue 8
S- 14 – The Fort-Falls Bridge Authority Act Issue 6
S- 21 – An Act respecting Canadian Pacific Railway Company Issue 5
Motion respecting Trans-Alaska pipeline and tanker project Issue 7

BILL C-2

AN ACT TO AMEND THE CANADA SHIPPING ACT

Bill C-2

Amendments proposed
Clause 738–Removal of ships in distress etc. International Chamber of Shipping 3:47
Clause 739–Regulations International Chamber of Shipping 3:47
Clause 741–Powers of pollution prevention officer, International Chamber of Shipping 3:47
Clause 743–Civil Liability, PACE 3:36
Clause 744–Limitations on liability
–B.P. Oil Ltd. 3:18, 3:38
–Imperial Oil Ltd. 3:12-16
–London Group of Probation and Indemnity Associations 3:5-6, 3:33
–PACE 3:37
–Texaco Canada Ltd. 3:16-17
Clause 745–Evidence of financial responsibility
–B.P. Oil Ltd. 3:38
–London Group of Protection and Indemnity Associations 3:7-8, 3:33
Clause 746–Maritime Pollution Claims Fund, B.P. Oil Ltd. 3:38-39
Clause 757–Payments into Fund International Chamber of Shipping 3:47
Clauses 769 and 770–Seizure, International Chamber of shipping 3:48
Discussions
Clause 744–Limitations on liability 4:17-18
Clause 745–Evidence of financial responsibility 4:18
Clause 769–Seizure 4:20-21
Administrator, powers 4:13-14
Application 3:31
Brussels Convention, IMCO, conformity 2:8, 3:6, 3:7, 3:8, 3:21, 3:38
Reported to Senate without amendment 4:5, 4:21
Seaworthiness oil vessels, regulations 4:12, 4:15

B.P. Oil Limited
Brief 3:38-39

Brisset, Jean, Q.C., Counsel, London Group of Protection and Indemnity Associations, Montreal
Statements 2:8-9, 3:5-8

Brussels Convention–IMCO
See
Intergovernmental Maritime Consultative Organization

Burke, J. J., General Manager, Canadian Chamber of Shipping
Statement 3:25-26

Canadian Chamber of Shipping
Brief 3:46

Contract Regarding Interim Supplement to Tanker Liability for Oil Pollution
See
CRISTAL

CRISTAL
Canada, exclusion 3:8, 3:18-19, 3:21, 3:30, 3:31, 3:39, 3:45, 4:8, 4:22
Role, definitions, conditions 3:39-42
Signatory Parties 3:42-43

Dominion Marine Association
Bill C-2, comments 3:21-23, 3:25

Galipeault, A., Legal Adviser, Texaco Canada Limited
Statement 3:16-17

Gulf Oil Canada Limited
Brief 3:44-45

Hurcomb, Captain Philip, R., General Manager, Dominion Marine Association
Statement 3:21-23

Imperial Oil Limited
Bill C-2, proposed modifications 3:14

Intergovernmental Maritime Consultative Organization 1954/1969
Application areas 3:9-10
Canada, participation 2:8, 3:6, 3:9, 3:17-18, 3:21, 3:25, 3:30, 3:44
See also
Bill C-2 – Brussels Convention, IMCO

International Chamber of Shipping
Brief 3:47-48

Langelier, Jean, Q.C., British Petroleum Oil Limited
Statements 3:17-19, 4:8

Lewtas, J. L., Q.C., Counsel, Petroleum Association for Conservation of Environment-Imperial Oil
Statement 3:11-14

Maritime Pollution Claims Fund
See
Pollution – Liability

Macgillivray, R. R., Director, Marine Regulations Branch, Department of Transport
Bill C-2, comments 2:5
Proposed modifications 3:28-32

OCIMF
See
Oil Companies International Marine Forum

Oil Companies International Marine Forum
CRISTAL, comments 4:8
Telex messages to B.P. Oil Ltd. 4:8, 4:22

PACE
See
Petroleum Association for Conservation of the Environment

Petroleum Association for Conservation of the Environment
Brief 3:34-37
Objectives 3:34, 3:36-37

Phillips, J. C., Counsel, Gulf Oil Canada Limited, Toronto
Brief 3:20-21

Pollution
Canada, United States, responsibility 3:8-9, 3:22-25, 3:28, 3:29, 3:30, 4:7-8, 4:18
International agreements, necessity 3:25-27, 3:30, 3:46, 3:47, 3:48
International indemnity fund, establishment 3:16, 3:39-40, 3:46, 4:10-11
Oil, pollutant, definitions 2:7
Prevention officers, appointment, powers 2:6-7, 3:47, 4:13
Responsibility, liability
Evidence of financial 3:18, 3:24, 3:36, 3:38
Exceptions 3:21, 3:22, 3:29, 3:44
Insurers 3:7-9, 3:10, 3:17
International indemnity fund 3:16
Limitation, distribution of fund, procedure 2:5, 2:8-9, 3:5-8, 3:13, 3:28, 3:38
Owners
Cargo 2:5, 2:8-9, 3:5, 3:16, 3:20, 3:44, 4:14, 4:17-18
Ships 2:5, 3:5, 3:11-13, 3:15-16, 3:20, 3:31, 3:35, 4:14
Pollution claims fund, payments 3:11-12, 3:14, 3:18-19, 3:20-21, 3:30, 3:35-36, 3:38-39, 3:44-45, 4:19
Right of recovery 3:14-16, 3:20, 3:22, 3:30, 3:31, 4:17
Transport Dept. 3:6
Unlimited 3:17-18, 3:19, 3:30

Protection and Indemnity Associations
Monopolies, services 3:7, 3:9, 3:10

Protection and Indemnity Associations, London Group of
Bill C-2, modifications, proposals 2:8-10, 3:5-8, 3:33

Tanker Owners Voluntary Agreement Concerning Liability for Pollution
See
TOVALOP

TOVALOP
Role 3:16, 3:18, 3:39

BILL C-186

CANADIAN NATIONAL RAILWAYS
FINANCING AND GUARANTEE ACT, 1970

Air Canada
Acts, financing and guarantees, purpose 1:24
CN, relationship 1:18-19
Parliamentary liaison agents 1:19

Bill C-186
Objective 1:7, 1:9
Provisions, explanations 1:21-22
Reasons for urgent authorization 1:6, 1:16
Reported to Senate without modification 1:5
Statutory authority, expenditures, transactions 1:7-8, 1:15-16, 1:19-20, 1:23-24

Canadian National Railways
Acts, financing and guarantees 1:23
Air Canada, relationship 1:18-19
Capital, revisions, background 1:11-12, 1:14
Deficit, 1970 1:13, 1:19
Dining cars, Montreal-Ottawa 1:18
Interest on debt, moratarium 1:12, 1:13-15

Parliamentary liaison officers 1:19
Subsidiaries, profit, loss 1:16-17

Transport and Communications, Standing Senate Committee on
Bill C-186, consideration procedure 1:6-7, 1:8-10, 1:12-13

Vaughan, R. T., Vice-President, Secretary, Canadian National Railways and Air Canada
Statement 1:21-22

BILL C-240

AN ACT TO AMEND
THE POST OFFICE ACT

Bill C-240
Objectives 9:6
Reported to Senate without modification 9:5, 9:10
Pageau, F., Director, Postal Rates and Classification, Post Office Dept.
Statement 9:6

Post Office Department
Deficit, 1970-71 9:6
Mail delivery
Improvement 9:7-8
Six-day service 9:8-10
Rates, increase, reasons 9:7

BILL C-246

AN ACT RESPECTING PILOTAGE

Bill C-246
Reported to Senate without modification 8:5

Langlois, Raynald, Counsel, National Association of Canadian Marine Pilots
Statement 8:9-10

Macgillivray, R. R., Director, Marine Regulation Branch, Department of Transport
Statement 8:7-9

Pilotage
Compulsory 8:7, 8:9
Exemptions, conditions 8:7-8, 8:10
Foreign ships, open waters, Great Lakes 8:11
Governor in Council, powers 8:8
Licences, certificates 8:8
Regional authorities, establishment, role, powers 8:7-9

BILL S-14

THE FORT-FALLS
BRIDGE AUTHORITY ACT

Bill S-14
Aim 6:7
Explanation 6:7-8
Reported to Senate without amendment 6:5

Fort Frances – International Falls
Bridge
Canada – U.S., joint authority 6:8
Cost, payment 6:8-9
Customs, immigration offices, financing, responsibility 6:7, 6:9-10
Tolls, funds use 6:9

International Bridge Committee
Letters, Chairman, Canadian Section,
H. A. L. Tibbets and Minnesota
Highways Dept., T. S. Thompson 6:11

BILL S-21
AN ACT RESPECTING CANADIAN
PACIFIC RAILWAY COMPANY

Allison, R. S., Vice-president, Prairie Region, Canadian Pacific Railway Company
Statement, description construction branch line 5:7-8

Athabasca Forest Industries Limited
Pulp mill, Doré Lake, Sask.
Construction, role, operations 5:8, 5:10, 5:13
Economy, influences 5:9
Employment creation 5:8-9, 5:12
Grant 5:11
Pollution control 5:9, 5:12-13, 5:14

Bill S-21
Aim 5:7
Reported to Senate without amendment 5:5, 5:14

Canadian Pacific Railway Company
Athabasca, north, possible development 5:11-12
Branch line construction, Doré Lake, Sask., description, necessity 5:7-8, 5:9-10

Condon, J. F., Vice-President, Member, Board of Directors, Athabasca Forest Industries Limited
Statement, construction pulp mill 5:8

Hopkins, E. Russell, Law Clerk and Parliamentary Counsel
Bill, approval legal form 5:14

Prince Albert, Sask.
Pulp mill, pollution control 5:12

St. Ann Nackawic, Sask.
Pulp mill, pollution control 5:12, 5:13

Steuart, Hon. D. G., Deputy Premier, Provincial Treasurer, Government of Saskatchewan
Statement, construction pulp mill, effects 5:8-10

MOTION RESPECTING TRANS-ALASKA PIPELINE AND TANKER PROJECT

Anderson, David, M.P., (Esquimalt-Saanich) British Columbia
Statement 7:8-10

Cook, Captain J. P., Chairman, British Columbia Coast Pilots
Statement, tanker project 7:13

Environmental Pollution, House of Commons Special Committee
Trans-Alaska pipeline and tanker project, opposition 7:10

Tanker Project
Canada – U.S.
Boundaries, problem 7:13
Co-operation 7:11-12, 7:14
Confined waters, problem 7:8-9, 7:13
East coast, routes, comparison 7:11
Government policy 7:11
Inevitable spills 7:8, 7:13

Trans-Alaska Pipeline
U.S., opposition 7:10
Uselessness 7:10

Transport and Communications Standing Senate Committee
Reported to Senate with recommendations 7:5, 7:14

Appendices
Issue 1
A–Statement, R. T. Vaughan, Vice-President and Secretary, Canadian National Railways 1:20-21
B–Canadian National Railways Financing and Guarantee Acts 1:22-23
Issue 3
A–London Group of Protection and Indemnity Association, proposed amendments to Bill C-2 3:33
B–Brief, Petroleum Association for the conservation of the Canadian Environment (PACE) 3:34-37
C–Brief, B.P. Oil Limited and Statutes of CRISTAL Fund 3:38-43
D–Brief, Gulf Oil Canada Limited 3:44-45
E–Brief, Canadian Chamber of Shipping 3:46
F–Brief, International Chamber of Shipping 3:47-48
Issue 4
Telex communications to B.P. Oil Ltd. from Oil Companies International Marine Forum 4:22
Issue 6
Correspondence exchanged between International Bridge Committee and State of Minnesota Department of Highways re: Bill S-14 6:11

Witnesses
–Allison, R. S., Vice-President, Prairie Region, Canadian Pacific Railway Company 5:7
–Anderson, David, M.P. (Esquimalt-Saanich) British Columbia 7:8-13
–Baughner, Arthur, Director General, Finance and Administration, Post Office Department 9:6, 9:8
–Boyhan, G. E., Chief Engineer, Athabasca Forest Industries Limited 5:13-14
–Brisset, Jean, Advocate, London Group of Protection and Indemnity Associations; Representative, The Shipping Federation of Canada; The Canadian Chamber of Shipping 2:8-10, 3:5-10, 3:29, 4:12, 8:11
–Burke, J. J., General Manager, Dominion Marine Association 3:25-28
–Condon, J. F., Vice-President, member of Board of Directors, Athabasca Forest Industries Ltd. 5:8, 5:10-13
–Cook, Captain J. B., Chairman, British Columbia Coast Pilots of Vancouver 7:13
–Cooper, G. M., General Counsel, Canadian National Railways 1:7-8
–Galipeault, A., Legal Counsel, Texaco Canada Ltd. 3:16-17
–Hurcomb, Captain P. R., General Manager, Dominion Marine Association 3:21-24, 8:10-11
–Langelier, A., Q.C., B.P. Oil Ltd. 3:17-18, 4:8-9, 4:11-12
–Langlois, Raynold, Counsel, National Association of Canadian Marine Pilots 8:9-10
–Lewtas, J. L., Q.C., Counsel, Pace-Imperial Oil 3:11-15, 4:15-16
–Lortie, Alain, Representative, Federation of St. Lawrence River Pilots 8:10
–Macgillivray, R. R., Director, Marine Regulation Branch, Transport Department 2:5-8, 3:9-10, 3:27-32, 4:7-21, 8:7-9
–Myers, L. D., Director, Postal Service and Standards, Post Office Department 9:8-10
–Pageau, F., Director, Postal Rates and Classification, Post Office Department 9:6-9
–Phillips, J. C., General Counsel, Gulf Oil Canada Ltd. 3:19-21
–Reid, John, M.P. (Kenora-Rainy River) Ontario 6:8, 6:9
–Ryan, J. W., Director, Legislation Section, Justice Department 6:8
–Steuart, Hon. D. G., Deputy Premier, Provincial Treasurer, Government of Saskatchewan 5:8-14
–Tetro, Paul B., Legal Counsel and Parliamentary Agent, Canadian Pacific Railway Company 5:7-10, 5:13-14
–Vaughan, R. T., Q.C., Vice-President and Secretary, Canadian National Railways Company 1:6-20

Members of Committee
Chairman:
–Haig, Hon. J. Campbell (River Heights) 5:7, 5:14, 6:7-8, 6:10, 7:7-8, 7:14-15, 8:7, 8:10-11, 9:6, 9:9
–Robichaud, Hédard J. (Gloucester) 1:6-10, 1:12, 1:16-19, 2:5-10, 3:5, 3:8-9, 3:11-12, 3:14, 3:16-17, 3:21-22, 3:24-28, 3:31-32, 4:7-13, 4:16-21

Senators present:
–Argue, Hon. Hazen, (Regina) 6:10, 7:7, 7:10, 7:14-15, 9:10

–Blois, Hon. Frederick N. (Colchester-Hants) 6:9, 7:12, 7:14, 9:9-10
–Bourget, Hon. Maurice (The Laurentides) 3:14, 3:24-25, 3:28, 4:7-8, 4:11, 4:17
–Burchill, Hon. G. Percival (Northumberland-Miramichi) 1:14-15, 1:17, 1:19, 2:6-7, 3:8, 3:13, 3:27, 4:13, 5:10, 6:9, 7:9, 7:11, 7:14, 9:6
–Denis, Hon. Azellus (Lasalle) 5:13
–Flynn, Hon. Jacques (Rougemont) 3:9, 3:11, 3:14-18, 3:21, 3:23-32, 5:10-12
–Hollett, Hon. Malcolm (Burin) 1:16, 1:18-19, 2:6-7, 2:9, 3:8, 4:9
–Isnor, Hon. Gordon B. (Halifax-Dartmouth) 7:8-9, 7:13
–Kinley, Hon. John J. (Queens-Lunenburg) 3:9-10, 4:13-15, 4:17-21
–Kinnear, Hon. Mary E. (Welland) 5:12, 5:14, 6:9, 9:8
–Langlois, Hon. Léopold (Grandville) 1:15, 2:6-7, 2:10, 3:8-10 3:15-16, 3:19-20, 6:10, 7:7, 7:10-14, 8:10
–McElman, Hon. Charles (Nashwaak Valley) 3:14, 3:19, 4:9-14, 5:11-12, 5:13-14
–McDonald, Hon. Alexander Hamilton (Moosomin) 7:11-12
–McGrand, Hon. Fred A. (Sunbury) 5:14
–Martin, Hon. Paul, P.C. (Windsor-Walkerville) 8:11
–Molson, Hon. Hartland de M. (Alma) 5:10
–Pearson, Hon. Arthur M. (Lumsden) 2:5, 2:7-9, 3:28
–Prowse, Hon. J. Harper (Edmonton) 6:9-10, 7:7
–Rattenbury, Hon. Nelson (Southern New Brunswick) 3:8-9, 3:14, 3:16, 3:19, 3:24, 3:27, 3:29, 3:31-32, 4:9-11, 4:19-20, 5:10-11, 6:8-10, 7:7
–Smith, Hon. Donald (Queens-Shelburne) 1:6, 3:27, 4:10, 4:13, 5:13-14, 6:10, 7:7, 9:9-10
–Sparrow, Hon. Herbert Orville (Battlefords) 5:11-13

Present (Non-members)

–Benidickson, Hon. William Moore (Kenora-Rainy River) 1:6-7, 1:9, 1:11-16, 1:18-19, 6:7-10
–Cameron, Hon. Donald (Banff) 9:7-9
–Cook, Hon. Eric (St. John's East) 1:8, 1:13-14, 1:17-18
–Grosart, Hon. Allister (Pickering) 1:7-12, 1:14-19
–Thompson, Hon. Andrew E. (Dovercourt) 4:11-12, 4:14-18

Published under authority of the Senate by the Queen's Printer for Canada

Available from Information Canada, Ottawa, Canada.

A1 YE 14
-T83
LIBRARY
MAR - 5 1973
UNIVERSITY OF TORONTO



FIRST SESSION—TWENTY-NINTH PARLIAMENT
1973

THE SENATE OF CANADA

PROCEEDINGS
OF THE
STANDING SENATE COMMITTEE ON

TRANSPORT AND COMMUNICATIONS

The Honourable J. HARPER PROWSE, *Acting Chairman*

Issue No. 1

WEDNESDAY, JANUARY 31, 1973

Complete Proceedings on Bill C-127,

intituled:

"An Act to amend the Pilotage Act"

REPORT OF THE COMMITTEE

(Witnesses:—See Minutes of Proceedings)

STANDING SENATE COMMITTEE ON
TRANSPORT AND COMMUNICATIONS

The Hon. J. Campbell Haig, *Chairman.*

The Honourable Senators:

Argue	Langlois
Blois	Lawson
Bourget	*Martin
Burchill	McElman
Denis	Nichol
*Flynn	Petten
Forsey	Prowse
Fournier (*Madawaska-Restigouche*)	Rattenbury
	Smith
Graham	Sparrow
Haig	van Roggen
	Welch

*Ex officio members
(Quorum 5)

Order of Reference

Extract from the Minutes of the Proceedings of the Senate, January 31st, 1973.

"A Message was brought from the House of Commons by their Clerk with a Bill C-127, intituled: "An Act to amend the Pilotage Act", to which they desire the concurrence of the Senate.

The Bill was read the first time.

With leave of the Senate,
The Honourable Senator Langlois moved, seconded by the Honourable Senator Molgat, that the Bill be read the second time now.

After debate, and—
The question being put on the motion, it was—
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Langlois moved, seconded by the Honourable Senator Molgat, that the Bill be referred to the Standing Senate Committee on Transport and Communications.

After debate, and—
The question being put on the motion, it was—
Resolved in the affirmative."

ROBERT FORTIER
Clerk of the Senate

Minutes of Proceedings

January 31, 1973.
(1)

Pursuant to notice, the Standing Senate Committee on Transport and Communications met this day at 3.15 p.m. to consider the Bill C-127, intituled:

"An Act to amend the Pilotage Act".

Present: The Honourable Senators Bourget, Denis, Flynn, Forsey, Graham, Langlois, Prowse and Sparrow.—(8)

Present but not of the Committee: The Honourable Senators Asselin, Basha, Carter, Deschatelets, Desruisseaux, Forsey, Fournier (*Madawaska-Restigouche*), Grosart, Lamontagne, Macnaughton, McElman, McIlraith, McLean, McNamara, Molgat, O'Leary and Phillips.—(17)

In Attendance: Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

Upon Motion of the Honourable Senator Flynn, the Honourable Senator Prowse was elected Acting Chairman.

Upon Motion of the Honourable Senator Denis, it was *Resolved* that: unless and until otherwise ordered by the Committee, 800 copies in English and 300 copies in French of its day-to-day proceedings be printed.

The following witnesses were heard:

Department of Transport:

The Honourable Jean Marchand,
Minister.

Captain L. M. Dussault,
Director,
Marine Pilotage Branch.

Upon Motion, it was *Resolved* to report the said Bill without amendment.

At 3.45 p.m. the Committee adjourned.

ATTEST:

Aline Pritchard,
Clerk of the Committee.

Report of the Committee

Wednesday, January 31, 1973.

The Standing Senate Committee on Transport and Communications to which was referred Bill C-127, intituled: "An Act to amend the Pilotage Act", has in obedience to the order of reference of January 31, 1973, examined the said Bill and now reports the same without amendment.

Respectfully submitted.

J. Harper Prowse,
Acting Chairman.

The Standing Senate Committee on Transport and Communications

Evidence

Wednesday, January 31, 1973

The Standing Senate Committee on Transport and Communications, to which was referred Bill C-127, to amend the Pilotage Act, met this day at 3:15 p.m. to give consideration to the bill.

Senator J. Harper Prowse (*Acting Chairman*) in the Chair.

The Acting Chairman: Honourable senators, we have before us Bill C-127. As it is a one-clause bill, I suggest that we proceed to consider that clause. If I followed the debate properly, what we are concerned with is what has to be done and why.

We have with us Captain Michel Dussault, Director, Marine Pilotage Branch, Ministry of Transport. Captain Dussault, would you first explain the purpose of and reason for the bill?

Captain L. Michel Dussault, Director, Marine Pilotage Branch, Ministry of Transport: Honourable senators, the purpose of the bill is fairly simple, and by way of explanation it is hard for me to do better than Senator Langlois did in the Senate. The bill really has only two purpose, to give more time to the four regional Pilotage Authorities to complete their regulations on the operation and administration of pilotage under section 14 of the bill, and also to give time to the Canadian Transport Commission to hear and decide on appeals against the tariffs which were lodged under section 23 regarding certain tariffs that were proposed under section 22.

I would stress that the main purpose concerns regulations under section 14. None of the Authorities at this date—and this expires tonight at midnight—has published its regulations, and none of them, of course, has been approved by the Governor in Council.

Senator Flynn: What are the regulations and bylaws in force at present? Are they those which were in force before the coming into force of the Pilotage Act?

Capt. Dussault: That is correct.

Senator Flynn: These were the regulations and bylaws, the divinity of which was put in doubt by the Royal Commission on Pilotage?

Capt. Dussault: In large part, yes, but there have been a few amendments in the last couple of years. To give an example, a large majority of the tariffs have been changed in the last couple of years, so it could be said that these were more or less new. At times even some matters of principle were new, such as double pilotage in the St. Lawrence for winter navigation tariffs, and other such things.

Senator Flynn: When you speak of tariffs do you mean pilotage tariffs?

Capt. Dussault: That is right.

Senator Flynn: The price the shipping companies or shipowners have to pay for pilotage services?

Capt. Dussault: That is correct.

Senator Flynn: You mean these amendments have been made under the new Pilotage Act?

Capt. Dussault: No. I have to qualify this. Since the new act came into force in February last some of the Authorities have published, and have had approved by the Governor in Council, new tariffs. On the other hand, some of the authorities have not, so tariffwise we are in a sort of mixed situation here.

Senator Flynn: You would say that tariffs approved by the Governor in Council under the new Pilotage Act are valid, that there is no doubt as to their validity?

Capt. Dussault: That is correct.

Senator Flynn: Again subject to the same questions that were raised by the Royal Commission on Pilotage?

Capt. Dussault: You are correct, senator.

Senator Flynn: At what stage is the drafting of regulations in cases where the problem still exists?

Capt. Dussault: With none of the Authorities are the regulations complete and approved by the Governor in Council, so none of them is finalized.

Senator Flynn: How long have these negotiations been going on?

Capt. Dussault: It is hard for me to answer that. As you well know, these Authorities are type D crown corporations and report directly to the minister. Some of these Authorities have taken this to mean just that, so at times I am not kept fully in the picture. It is very hard for me to answer you directly. They have all been working on them for months.

Senator Flynn: Would I be wrong in saying that in some cases the negotiations have been going on for over three years?

Capt. Dussault: Not in these cases.

Senator Flynn: Where the regulations and bylaws were adopted under the supposed authority of the former Canada Shipping Act, the divinity of which was put in doubt by the Royal Commission on Pilotage, there must have been negotiations right after the finding of the commission.

Capt. Dussault: Yes, but they were with the Directorate of Pilotage at the time, which was controlled by the then Department of Transport directly from Ottawa. Under the new act this is not so; the entire operation has been given to the new Authority and is their full responsibility. It is a brand new ball game, if you will pardon the expression.

Senator Flynn: I suppose they took into consideration what had been done from 1969 to 1971.

Capt. Dussault: That is not correct, because these new Authorities are really operating under this new act, and in most instances they envisage in many cases a brand new way of operating pilotage in their areas. To give an example, most of the pilots in the Atlantic region were contractors; they were grouped into associations, but were contracting as more or less private entrepreneurs. They have all now elected, under the new act, to become employees of the Authorities, which presents a different picture. Negotiations which were on a contractual basis now have a more or less employer-employee status, which puts a different colour on the whole thing.

Senator Flynn: That is not the case, of course, of the lower St. Lawrence pilots.

Capt. Dussault: No, sir; they have elected to remain contractors.

Senator Flynn: To stay as they are.

Capt. Dussault: That is correct.

Senator Flynn: I suppose the negotiations that started before 1971 have been going on, as far as they are concerned.

Capt. Dussault: Yes, with a difference.

Senator Flynn: Yes, with a different setup.

Capt. Dussault: That is right.

Senator Flynn: In a new framework. I suppose that there is some continuity between what was done prior to 1971 and what has been done since then?

Capt. Dussault: You are correct in assuming that the same trend or principle is being kept to, yes.

Senator Flynn: Would you say, Capt. Dussault, that another year will be sufficient for the ministry and the interested parties to come to a conclusion, to make an agreement and to draft regulations that will be approved by the Governor in Council?

Capt. Dussault: I would certainly hope so, senator.

Senator Flynn: Would you agree that some of the officials of the department said the same thing about three years ago?

Capt. Dussault: That is correct.

Senator Flynn: Thank you.

Senator Langlois: Is it not a fact that these negotiations are now at an advanced stage?

Capt. Dussault: They are. In the great majority of cases, I would think that with due diligence it could be only a matter of a few months before it is done, except with the reservation of the tariff question. If there is any appeal to the Canadian Transport Commission, then it is up to the CTC, and we do not know how quickly the CTC will deal with such appeals.

Senator Flynn: Are you an optimist with regard to the swiftness of the operation?

Capt. Dussault: I try to be.

Senator Langlois: This might clarify the situation. It must be filed within 30 days of the publication of the tariff in the *Canada Gazette*.

Capt. Dussault: That is correct.

Senator Langlois: So you have an appeal time there.

Senator Flynn: That is the time in which to appeal?

Senator Langlois: Yes, and after that the CTC has to find time to hear the appeal.

Senator Flynn: We would not complain to the department or have a grievance against the department because of the fact that there would be an appeal to the commission.

The Acting Chairman: But where there is an appeal, on this point here, this would then be the deadline?

Capt. Dussault: You are correct, sir.

Senator Flynn: It would be up to the commission to try to dispose of the appeal as soon as possible.

Capt. Dussault: You are correct.

Senator Flynn: Then we would have someone else to blame.

The Acting Chairman: That is always useful!

Senator Langlois: Could you indicate the number of such appeals filed to date?

Capt. Dussault: Appeals on tariffs? I must qualify this. There are two types of appeal. There is an appeal applicable only to tariff matters which is, of course, filed with the Canadian Transport Commission. The other is a pilotage matter, and that is why I have mentioned section 14 as being important. Under section 14 of the regulations, the interested parties can also go on appeal to the minister, and again there is a period of 30 days. Let us take first things first. First, to the CTC the whole of the new proposed Atlantic Pilotage Authority tariffs have been appealed by a number of bodies—by the Shipping Federation of Canada, by the Dominion Marine Association, by the Halifax-Dartmouth Port Authority; also by the governments of New Brunswick and Nova Scotia; and by a number of others. I have named but a few. I believe there were 11 or 12 of them in all.

Senator Flynn: When were these appeals lodged?

Capt. Dussault: In the last six weeks or so.

Senator Flynn: In the last six weeks. So it would be about that time that the department realized that the deadline of February 1 could not be met?

Capt. Dussault: Yes.

Senator Flynn: Thank you.

Senator Carter: Did any Pilotage Authority agree to set up its own system of tariffs?

Capt. Dussault: Yes, sir. They have full autonomy to do this. But, as I have just mentioned, this is exactly what happened in the case of the Atlantic Pilotage Authority. They devised a tariff which I suppose they thought was right, and they published it in Part I of the *Canada Gazette*. Then, interested parties appealed to the CTC, as this new pilotage legislation gives them the right to do; and this is where we are now.

Senator Carter: Is there any co-ordination to ensure some uniformity of tariffs between one area and another?

Capt. Dussault: Each authority has autonomy. We would much prefer to have uniformity, from the pilotage point of view, but this is what is in the legislation.

Senator Carter: You said that under the new act there was a change in the system. Formerly the pilots were employed on a contractual basis, and now there is more of an employer-employee relationship. Does that mean that the pilots are now in associations bargaining on their behalf, each bargaining with its own Authority and setting up its tariff?

Capt. Dussault: You are partially correct, sir. The way it has worked out is this. To start with, I must say that under the new regulations, all the pilots in Canada, or the associations or corporations of pilots, were given the right to elect among themselves which status they would like to work under with the Authorities—either as employees, as the Atlantic pilots decided to elect to become; or to remain or become contractors. We had some employees before who might like to become contractors. This right is also given to them.

Senator Carter: So you still have some contractors?

Capt. Dussault: Oh yes, the vast majority of pilots in Canada are still so. As Senator Flynn has mentioned, most of the St. Lawrence pilots have elected to remain contractors.

Senator Carter: What obligations are assumed by the Authorities on the contractual basis? The pilots themselves have to provide their own facilities, pilot ships and so forth? Who does that on the employer-employee basis?

Capt. Dussault: The Authorities do so, at this time. It is so under all four Authorities, whatever the status of pilots. What I should say is that the auxiliary services—such as dispatching facilities, administration of pilotage, pilot boat administration and operation—are carried out by the Pilotage Authorities themselves whatever the status the pilots have.

Senator Bourget: Is this arranged by the Pilotage Authority?

Capt. Dussault: By the Pilotage Authority. I must mention here that this is covered by the Government of Canada in a large part of the bill at this time.

Senator Bourget: And it is part of the bill?

Capt. Dussault: This is part of this bill. It says that each Authority must become self-sufficient. The Ministry of Transport and my superiors have put as a target date three to five years for them to become self-sufficient, each trying to meet that target date.

Senator Carter: In each Pilotage Authority on the Atlantic coast, where you have this employer-employee relationship, is there some sort of a system on wages?

Capt. Dussault: They have devised one.

Senator Carter: Does each pilot get the same wage?

Capt. Dussault: No, sir. They will be graded. This is being negotiated. This is why this amendment is being asked for, because all this is not finalized yet. This is what they have done. The pilots in ports in the Atlantic region have appointed a committee representative of the whole of that region. This committee was given the power to negotiate with the representatives of the Pilotage Authority. They have come to an agreement. They negotiate contracts which give pilots in various districts, and even within a district, various wages, depending on the qualifications of the pilot or the classification he is in.

Senator Langlois: Mr. Chairman, I think Senator Carter had in mind a flat rate. At this stage—and you can correct me if I am wrong—I believe these tariffs are based on the physical characteristics of the ship. For example, the measurements of the ship will enter into it—its draft, length and size. Also, you have classes of pilots. In the Quebec pilotage district you have Class A, Class B, and Class C pilots. All these ingredients are taken into account when the tariff is formulated and negotiated with the shipping industry.

Senator Carter: The Pilotage Authority gets its revenue from a scale of pilots' fees, depending on the size of the ship.

The Acting Chairman: May we have the witness answer the questions, please? Perhaps senators should not be answering one another.

Capt. Dussault: I must say here, Mr. Chairman, that what Senator Langlois explained is correct.

Senator Carter: I have just one more question, Mr. Chairman. Some of the bylaws were not considered valid that were made under the old act. Who replaces them? Does each Authority make the changes in these?

Capt. Dussault: You are correct, sir. The main reason why this amendment was asked for is that, as I explained to you before, not one of the Authorities has completed the regulations that they should make under section 14 of the new pilotage legislation, and in some cases tariffs have not been approved by the Governor in Council. So these are the two types of bylaw that you refer to as possibly in the past having been declared invalid. I do not think there is any question of validity here. Under the new legislation everything seems quite proper.

Senator Flynn: You can declare that an invalid bylaw is now valid. Parliament could change a man into a woman!

The Acting Chairman: It might not work, but they could do it.

Senator Flynn: I do not know if it would be of any help to the other sex, though.

Mr. Chairman, I see we have the Minister of Transport here. We would not want to submit him to cross-examination, but, if he would take the stand, he could receive our applause.

The Acting Chairman: Are we through with Captain Dussault?

Senator Flynn: As far as I am concerned, yes.

The Acting Chairman: Thank you, Captain Dussault.

Mr. Minister, would you care to address the committee?

Hon. Jean Marchand, Minister of Transport: Thank you very much, Mr. Chairman. I am sorry that this situation has arisen. I hope it has been explained to you satisfactorily. It is unfortunate that the Pilotage Authorities could not have been on time, but we hope that on the next occasion they are to be here they will be on time and we will not have to go through this process again. Thank you very much.

The Acting Chairman: Is it agreed that the bill be reported without amendment?

Hon. Senators: Agreed.

The Acting Chairman: Then I will report the bill without amendment.

The committee adjourned.

Published under authority of the Senate by the Queen's Printer for Canada

Available from Information Canada, Ottawa, Canada.

CAI YC 19
C65

FIRST SESSION—TWENTY-NINTH PARLIAMENT
1973

THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING SENATE COMMITTEE ON

TRANSPORT AND COMMUNICATIONS

The Honourable Maurice Bourget, *Deputy Chairman*

LIBRARY
SEP - 7 1973
UNIVERSITY OF TORONTO

Issue No. 2

WEDNESDAY, JUNE 27, 1973

Complete Proceedings on Bill S-9, intituled:

"An Act to enable Canada to comply with a Convention on the International Recognition of Rights in Aircraft".

REPORT OF THE COMMITTEE

(Witnesses:—See Minutes of Proceedings)

25708—1

THE STANDING SENATE COMMITTEE ON
TRANSPORT AND COMMUNICATIONS

The Honourable Maurice Bourget, *Deputy Chairman*

The Honourable Senators,

Argue	Haig
Blois	Langlois
Bourget	Lawson
Buckwold	*Martin
Davey	McElman
Denis	Petten
*Flynn	Prowse
Forsey	Smith
Fournier (*Madawaska-Restigouche*)	Sparrow
Graham	van Roggen
	Welch

**Ex officio members*

20 Members
(Quorum 5)

Order of Reference

Extract from the Minutes of the Proceedings of the Senate, June 26th, 1973:

"Pursuant to the Order of the Day, the Honourable Senator Lapointe moved, seconded by the Honourable Senator Lafond, that the Bill S-9, intituled: "An Act to enable Canada to comply with a Convention on the International Recognition of Rights in Aircraft", be read the second time.

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Lapointe moved, seconded by the Honourable Senator Lafond, that the Bill be referred to the Standing Senate Committee on Transport and Communications.

The question being put on the motion, it was—

Resolved in the affirmative.

ROBERT FORTIER
Clerk of the Senate

25708—2

Minutes of Proceedings

Wednesday, June 27, 1973.

Pursuant to notice and adjournment, the Standing Senate Committee on Transport and Communications met this day at 4:35 p.m. to consider the Bill S-9, intituled: "An Act to enable Canada to comply with a Convention on the International Recognition of Rights in Aircraft".

Present: The Honourable Senators Bourget (*Deputy Chairman*), Argue, Blois, Denis, Forsey, McElman, Petten, Prowse and Sparrow. (9)

Present, but not of the Committee: The Honourable Senators Choquette, Lapointe and McLean. (3)

The following withnesses were heard:

Department of Transport:

Mr. L. Shields,
Legal Services;

Mr. P. Walker,
Regulations Licensing;

Mr. C. Cowie,
Aircraft Licensing.

Upon Motion, it was *Resolved* to report the said Bill without amendment.

At 4:55 p.m. the Committee adjourned to the call of the Chair.

ATTEST:

Aline Pritchard,
Clerk of the Committee.

Report of the Committee

Wednesday, June 27, 1973

The Standing Senate Committee on Transport and Communications to which was referred Bill S-9 intituled: "An Act to enable Canada to comply with a Convention on the International Recognition of Rights in Aircraft", has in obedience to the order of reference of June 26, 1973, examined the said Bill and now reports the same without amendment.

Respectfully submitted.

Maurice Bourget
Deputy Chairman

The Standing Senate Committee on Transport and Communications

Evidence

Ottawa, Wednesday, June 27, 1973.

The Standing Senate Committee on Transport and Communications, to which was referred Bill S-9, to enable Canada to comply with a Convention on the International Recognition of Rights in Aircraft, met this day at 4.35 p.m. to give consideration to the bill.

Senator Maurice Bourget (*Deputy Chairman*) in the Chair.

The Deputy Chairman: Honourable senators, we have on our agenda for consideration today Bill S-9, to enable Canada to comply with a Convention on the International Recognition of Rights in Aircraft. We also have the pleasure of having with us three witnesses from the Ministry of Transport. On my immediate right is Mr. L. Shields, of Legal Services; Mr. P. Walker, Regulations Licensing; and Mr. C. Cowie, of Aircraft Licensing. I have asked Mr. Shields if he has any comments which he would like to make before questions are asked, but he told me that it would be better if members of the committee were to ask questions.

Senator Forsey: I have one very simple question, to start with. Why has it taken so very long to get round to legislation on this subject? I suppose the authorities might say that they wanted time for mature reflection, but 25 years, it seems to me, allows for very mature reflection. What was the hitch?

Mr. L. Shields, Legal Services, Ministry of Transport: I do not think it was a case of mature reflection; I think it was a case of pressure not being exerted by any aircraft operators or financial interests that there was any advantage to implementing the convention. Where Canada is now getting into the manufacture of aircraft itself, and trying to sell these aircraft in other countries, the rights in these aircraft must necessarily be recognized from one country to another. This is what has developed. Then too there is the large amount of money involved in purchasing aircraft from other countries—and they are getting more expensive now—and it is difficult to find out what is actually against an aircraft. It is more difficult now than it has been. This legislation has actually been in process for about five years, but this is as far as it has ever got, and we hope that it will continue.

Senator Prowse: I wonder if Mr. Shields could tell us how many places would have to be searched in Canada alone at the present time, if I were going to buy an aircraft, to make sure that I was not going to be stuck?

Mr. Shields: At this time in every county, in every province, in every judicial district where aircraft might be going, in order to assure yourself that there was nothing against any aircraft. This legislation provides for one central place.

Senator Prowse: A central registry where you can make your examination, and then you are clear?

Mr. Shields: You will know exactly what is against an aircraft or its components.

Senator Choquette: Mr. Shields, reading over some of the clauses, and especially clause 6, we realize that this is practically the Chattel Mortgage and Mechanics Lien Act that is being provided for and being implemented in the federal Ministry of Transport. Now we know a search will be made before any transfer of interest can be made, but how is that search made? Does the department write in and say, "Here is a certificate. We have looked at our records for you, and we state that this is clear of any encumbrance"? Or do lawyers come here and make a search, like they do in the Patent Office, and then write in to their principals? Have you organized that part of the department yet?

Mr. Shields: The final organization has not been really completed yet, but each aircraft will have a file where all these various interests that are registered will be put, and this will be open to the public. We will not give a certificate that an aircraft is free of any liens, or that it has in fact any number of liens. We are not going to determine what the state of the title is. It is there for information purposes only, for people who want to get it. We may provide them with a copy of what is registered on the file against an aircraft, but we would not go further than that.

Senator Choquette: And anybody who supplies fuel, for instance, to an aircraft, and it is on credit, will they file their claim with your department in order to be protected?

Mr. Shields: If they had a claim against an aircraft and they wanted to file it, then they would have to file it with the department.

The Deputy Chairman: Otherwise they lose their claim?

Mr. Shields: Well, their interest in it would be subject to whatever interests are previously registered against that aircraft.

Senator Choquette: In other words, you follow the order of registration?

Mr. Shields: That is right.

Senator Choquette: And so far, when you organize this department of yours, you will be getting a lot of information and those that already have some interest registered

somewhere will have priority. Now, these claims, will they be renewed every year?

Mr. Shields: No. I think it is every five years they have to be renewed.

Senator Choquette: That is somewhat different from our ordinary mechanics liens and chattel mortgages. They have to be renewed within one year. If they are not, then you lose your rights.

Mr. Shields: The act provides for the interest to be considered to be expired after a period of five years, unless there is an application to renew it within that time, and then it can be extended for a further period.

Senator Choquette: What happens if an aircraft from France comes here and stays here for a while and is put up for sale or is otherwise sold voluntarily by the owner? What kind of searches could be made against it? Will there be reciprocity between countries who are parties to the convention?

Mr. Shields: The countries who have signed the convention agree to recognize the rights registered against an aircraft in that country, provided that the rights are registered in accordance with the laws of that country. This is the reason why we must have some laws in Canada for the registration of these interests, so that other countries will recognize the rights that are registered here. So, if there are rights registered against an aircraft in France, in accordance with the laws of France for the registration of such interests, then we would recognize them by ratifying the convention.

Senator Choquette: Then you talk about getting a court order before a sale, a forced sale. Is this any special court?

Mr. Shields: It would depend. No aircraft can be sold unless there is a court order on which it has to be shown that the person has made some attempt to exercise his rights of contract or to enforce his judgment other than by selling the aircraft. Then the court would direct that it be sold at a certain time and place, and somebody would look after that and would also take care of the distribution. The court would also order that some person should advise the registrar, whether here or elsewhere, of the transfer. Because, in the event of sale, somebody has to be appointed to effect the transfer to the seller, and the court would appoint this person.

Senator Choquette: But the sale itself would be advertised and the aircraft would be sold at auction, after seizure?

Mr. Shields: It could be sold at auction, yes. I presume it would be sold at auction. It would be advertised for sale, and all the interests—everybody who had a registered interest—would be notified of the sale.

Senator Prowse: It is set out in clause 10 of the bill.

Senator Lapointe: And would the profits be divided?

Mr. Shields: The amount of money received for the aircraft would be distributed in proportion to the interests. It would be somewhat similar to a bankruptcy distribution. Presumably, this is the way it would have to be in order to be fair.

Senator Prowse: Clause 10(1)(c) reads as follows:

> (c) notifies each person in whose name a notice of interest is recorded in the registry with respect to the aircraft of the time and place of the sale, . . .

So that everybody who has a registered interest has to know and has a chance to come and buy it.

Senator Forsey: It also says:

> . . . not less than one month before the time of the sale . . . by registered mail addressed to each such person at his latest known address.

Senator Lapointe: Why don't you exempt charter flights from seizure?

Senator Prowse: They are.

Mr. Shields: An aircraft used on charter service is not exempt from seizure without an order of the Federal Court. It is just an aircraft employed at the time on a scheduled service for the transport of passengers. The reason for this is quite obvious. On a scheduled service the carrier has a definite schedule which he is required to meet by virtue of his licence. He starts off in the morning, and he continues along, and he is required to meet this schedule. After all, people buy their tickets, and so on, on this basis. But in charter service, the charter operates only pursuant to a private contract at a certain definite time, so that is a different situation. The point of delaying passengers does not arise in charter services as it does in the case of public transportation which goes on day after day.

Senator Lapointe: But if the plane is seized in London, for example, then the people who have paid for the charter flight will be in trouble. They will not be able to come back to Montreal, for example, if the plane has been seized.

The Deputy Chairman: This has happened before.

Senator Lapointe: You do not consider the trouble to the people who have paid for their charter flight?

Mr. Shields: This has not been considered a problem for the reason that the charter operator is required, when he files his system of operations with the Air Transport Committee, to show what backup aircraft he has in the event that anything should happen to his original aircraft. If an engine goes out of action, or something like that happens, he has to have a backup aircraft and arrangements to bring his passengers back. So this is all taken care of in advance. But where a scheduled service is concerned, the aircraft are committed over long periods of time, and this is the reason for the difference. With a scheduled carrier, an aircraft may be committed over a period of six months, whereas with charter

services that does not happen; there is no disturbance of the public involved.

One of the points in favour of this legislation is that it helps prevent the public who require transportation from day to day, by scheduled service, being interrupted in the course of their business and duties. But charter services are usually providing pleasure trips, although that is not always necessarily the case. I am not saying anything against it, but that is one of the reasons for it. That is why it was not considered as being as serious for a charter service as it is for a scheduled service.

The Deputy Chairman: Have you discussed the contents of this bill with the provincial governments?

Mr. Shields: No, it has not been discussed with the provincial governments, but it has been discussed with the Canadian Bar Association, the airline section, which has representatives from all provinces. Many of the provisions here have been put in to meet their suggestions.

Senator Lapointe: Do you expect any trouble from some of the provinces?

Mr. Shields: No, we do not anticipate any trouble at all. In fact, we anticipate cooperation from all the provinces. I understand that the Province of British Columbia has already intimated that they will not accept liens against aircraft when this bill goes into effect.

The Deputy Chairman: I suppose all the provinces are aware that this bill has been introduced, and have a copy of it. Was a copy of this bill sent to all the provinces?

Mr. C. Cowie, Aircraft Licensing Section, Ministry of Transport: No, but most of the provinces are aware of it. They are using the Vehicles Act right now to cover aircraft, and they actually do not want to do this. Most of our reaction has been that the provinces want this to come in.

Senator Prowse: How will an owner get knowledge of liens that may be presently registered in the provinces?

Mr. Shields: This is provided for in the bill. There will be an interim period.

Senator Prowse: I notice that.

Mr. Shields: If somebody wants to take advantage of this bill, they will raise their lien in addition to it being registered under this bill. This bill is for their benefit, if they want to take advantage of it. They are not being forced to do so; there is no requirement that they must do it; but it does give any person who registers under this bill a benefit. If they want to take advantage of it, they would register under this bill.

Senator Lapointe: Will liens already registered in districts or counties be transferred to your central registry automatically?

Mr. Shields: Not automatically.

Senator Prowse: How will they get there?

Mr. Shields: The person who registers them there would do so by registering them.

Senator Prowse: If they know about the bill.

Mr. Shields: If they know about the bill, yes. They will know about the bill.

Senator Prowse: You mean, they had better know about the bill.

Mr. Shields: The bill will be publicized; there will be notices and that sort of thing. It will be brought to their attention.

Senator Choquette: When there is a bill like this, usually the local registrar in the county court, or wherever these liens and chattel mortgages are registered, locally advertises, or puts up signs, and each lawyer, house of credit or anything like that, gets copies and in no time they will know.

Mr. Shields: Yes. The financial institutions who are involved in credit, with mortgage interest in air carriers, are all aware of the provisions of this bill. We do not have a problem in that respect.

Senator Prowse: The type of people who have liens on aircraft are probably those who would be well aware of it.

Mr. Shields: They are all aware of it.

The Deputy Chairman: Are there any other questions? Should I go through the bill clause by clause?

Senator Choquette: No. You have almost gone through it clause by clause.

Senator Lapointe: Is this a voluntary system?

Mr. Shields: A voluntary system.

Senator Lapointe: But if someone does not register, he loses his right?

Mr. Shields: He does not get the benefit of the bill, that is right.

Senator Lapointe: So it is almost compulsory, if he wants not to lose anything?

Mr. Shields: If he wants to take the benefit of it, he has to comply with the provisions of the bill. If he wants to go outside, if he does not want to take the benefit, if he does not think the benefit is worth it, it is entirely up to him.

Mr. Cowie: We do not want a punishment system. If we make it compulsory and find out he has not done it, not only does he lose his right, but we have to go out and punish him. This we do not want to do.

Senator Forsey: They do not lose any rights they have now?

Mr. Shields: Whatever rights they have under existing laws remain.

The Deputy Chairman: Are there any more questions? Shall I report the bill without amendment?

Hon. Senators: Agreed.

The Deputy Chairman: Thank you, Mr. Shields, Mr. Walker and Mr. Cowie; you have been very helpful.

The committee adjourned.

Published under authority of the Senate by the Queen's Printer for Canada

Available from Information Canada, Ottawa, Canada

LIBRARY
SEP 24 1973
UNIVERSITY OF TORONTO

Government Publications

FIRST SESSION—TWENTY-NINTH PARLIAMENT
1973

THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING SENATE COMMITTEE ON

TRANSPORT AND COMMUNICATIONS

The Honourable Maurice Bourget, P.C., *Deputy Chairman*

Issue No. 3

TUESDAY, JULY 10, 1973

First Proceedings on the examination of radio and television commercial advertising broadcast in Canada

---

(Witnesses:—See Minutes of Proceedings)

25710—1

THE STANDING SENATE COMMITTEE ON TRANSPORT AND COMMUNICATIONS

The Honourable J. Campbell Haig, *Chairman*

The Honourable Maurice Bourget, p.c., *Deputy Chairman*

and

The Honourable Senators,

Argue	Langlois
Blois	Lawson
Buckwold	*Martin
Davey	McElman
Denis	Petten
*Flynn	Prowse
Forsey	Smith
Fournier (*Madawaska-Restigouche*)	Sparrow
Graham	van Roggen
	Welch

**Ex officio members*

20 Members

(Quorum 5)

Order of Reference

Extract from the Minutes of the Proceedings of the Senate, Thursday, May 24, 1973:

"The Honourable Senator Buckwold moved, seconded by the Honourable Senator Boucher:

That the Standing Senate Committee on Transport and Communications be authorized to examine and report upon the question of the advisability of steps being taken to ensure that all radio and television commercial advertising broadcast in Canada be completely produced in Canada, utilizing Canadian manpower to the maximum possible extent.

After debate, and—
The question being put on the motion, it was—
Resolved in the affirmative."

ROBERT FORTIER,
Clerk of the Senate.

25710—2

Minutes of Proceedings

July 10, 1973.

Pursuant to adjournement and notice, the Standing Senate Committee on Transport and Communications met this day at 3:00 p.m.

Present: The Honourable Senators Bourget (*Deputy Chairman*), Buckwold, Davey, Denis, Forsey, Fournier (*Madawaska-Restigouche*), Graham, McElman, Petten, Prowse and Sparrow. (11)

Present but not of the Committee: The Honourable Senators Laird, Lapointe, McGrand and Molgat. (4)

The Committee proceeded to the examination of radio and television commercial advertising broadcast in Canada.

The following witnesses, representing Agency Forum, were heard by the Committee:

Mr. Brian Skinner, President, Brian Skinner Communications Ltd., Toronto, and Chairman of the Agency Forum Committee on Nationalism;

Mr. Ivor Downie, President, Downie Advertising Limited, and Moderator, Agency Forum.

The following witnesses, representing J. Walter Thompson Limited, were then heard:

Mr. Donald Robertson, President;

Mr. John Cronin, Executive Vice-President;

Mr. Richard Kostyra, Vice-President, Director of Media and Broadcast;

Mr. Jerrold Beckerman, Vice-President, and Director of Consumer Information;

Mr. Philippe Fisette, Vice-President, and Director of Canadian Broadcast Production;

Mr. Anthony Miller, Vice-President, and Group Account Service Director.

At 6:30 p.m. the Committee adjourned to the call of the Chairman.

ATTEST:

Denis Bouffard,
Clerk of the Committee.

The Standing Senate Committee on Transport and Communications

Evidence

Ottawa, Tuesday, July 10, 1973.

The Standing Senate Committee on Transport and Communications met this day at 3 p.m. to consider the question of the advisability of steps being taken to ensure that all radio and television commercial advertising broadcast in Canada be completely produced in Canada, utilizing Canadian manpower to the maximum possible extent.

Senator Maurice Bourget (*Deputy Chairman*) in the Chair.

The Deputy Chairman: Honourable senators, our first witness this afternoon is Mr. Brian Skinner, who is accompanied by Mr. Ivor Downie.

On behalf of the members of the committee, I should like to welcome you here and thank you very much for having accepted our invitation to appear before our committee and for having sent us your brief. We understand you have not had time to translate it into French, but I imagine most of the French members here will be able to read the English version and, if necessary, I will try to help them.

From my conversation with Mr. Skinner this afternoon I understand he wishes to be permitted to read his brief, which will take only 18 minutes. That will give members a little time to prepare questions to put to the witnesses.

Mr. Skinner, would you care to begin, please?

Mr. Brian Skinner, President, Brian Skinner Communications Ltd., and Spokesman, Agency Forum Committee on Nationalism: Mr. Chairman and honourable senators, thank you for the opportunity to talk to this committee. I shall now read the brief:

Agency Forum was started three years ago to offer the principals of small and medium sized advertising agencies the opportunity to examine areas of common interest and concern.

The membership is comprised of the principals of 52 such advertising agencies. Similar forums are now active in Montreal and Calgary.

Some of the material presented here was presented in January, 1973 to the Ontario Select Committee on Economic and Cultural Nationalism.

Scope: While we realize that this committee's area of interest is with the importation of television and radio advertising and we will limit our comments to this, nevertheless the same inequities that prevail in these media also prevail in all others as well, including newspaper, magazine, outdoor, direct mail, point-of-sale and collateral material. An examination of these other areas would reveal similar unfair practices as are apparent in broadcast advertising.

Throughout this brief when we talk of companies, both foreign and domestic, we are referring to firms that have a product, commodity or service to sell to the Canadian public or business community, i.e. clients. Unless specifically stated, we are not referring to advertising agencies since they are in a third-party position between client and consumer, and will do as they are directed by the client.

The cause: "O'Canada, We Stand On Guard for Them."

Canadians are a truly unique people. Not the least of our difference is the intrinsic insecurity that leads us to give advantages to foreign based companies that we do not give to our own companies. We seem determined to make sure that others will do better in our market than we can do ourselves. We are like the nervous host who lavishes his guests with hospitality and then starves his children.

As things stand now, foreign based branches can import, at almost no cost, whatever advertising production components they may require in order to duplicate their parents' advertising in Canada without production expense. A Canadian company competing with these firms in Canada must, of course, pay the full cost of producing any material it requires. The net result of this is that it costs a Canadian company more to reach its own market than it does foreign owned competition. As long as offshore companies can dump their advertising in Canada at almost no cost, Canadian companies will be at a distinct, competitive disadvantage, because they will not have an equal opportunity to reach their own market and fulfil their market potential. This tends to stunt Canadian companies and inhibit their growth, particularly in any of the more competitive segments of the market.

As previously noted by Senator Buckwold, and in my original brief, the cost of importing a one minute television commercial is $64.80. This is in no way related to the actual cost of producing the completed commercial, but is based on a constant evaluation of $324, with the duty being 20 per cent of that $64.80. A Canadian company cannot even buy the most primitive commercial for $64.80. Large foreign based companies can afford to produce pools of commercials costing hundreds of thousands of dollars, which they use in their own market and also dump into Canada at nearly no cost.

With radio commercials it is the same story. A whole reel of taped commercials, regardless of how many actors, singers, musicians, announcers, et cetera, are used in its production, costs only 80 cents in duty to import. A Canadian company cannot even buy a blank reel of tape for that amount.

25710—2½

Similar inequities are true with the importation of all advertising production components. The duty is based on the lab cost of reproducing a duplicate, not on what the original item actually costs to produce.

This gives foreign based firms a nearly insurmountable advantage over domestic Canadian firms by enabling them to flood our country with advertising they do not have to pay to produce. In the name of "free trade" we are penalizing Canadian companies by giving them less than an equal opportunity in their own country. Foreign firms encourage the notion that this is free enterprise; but, of course, it is only free to them.

The Amount: To my knowledge there are no definitive figures on just how many television and radio commercials are imported into Canada for use in whole or in part on Canadian media. But a recent survey of television commercials by the Joint Broadcast Committee of the Association of Canadian Advertisers and the Institute of Canadian Advertising shows that of 772 commercials on the air in a one-week period one-third of them or 284 commercials were produced outside of Canada. And this represents commercials from only the 20 advertising agencies in the study and the study is representative of only what commercials were running during that one week of the test.

Previously we have used the example of a "Merrill Lynch is Bullish on Canada, nee America" commercial that cost $90,000 to produce and $64.80 to import. If we allow an average production cost of just $30,000 per commercial, then the 284 commercials from a single week out of the year would represent a better than eight-and-a-half million dollar advantage foreign firms are given over Canadian companies. And that is not the whole of it.

The Solution: We call on our government to publish and enforce "guidelines for good corporate citizenship" as a key component in a business strategy designed to support and encourage Canadian business initiative. This would spell out how foreign based companies should operate in our country, stressing the ethical considerations they must be prepared to follow if they wish to do business here.

One of the guidelines should be that they agree not to import any advertising or marketing production components in order that they will not have an unfair advantage over domestic industry and at the same time to stimulate our own cultural and communications communities.

We believe that most responsible companies would comply without complaint. Indeed many would be delighted to have published ethical ground rules by which to operate. Our experience is that very often branch companies here do not wish to pick up foreign produced material because they believe they can create more suitable advertising here, but they are forced to do it by their head offices. This would support those more independent-minded managers and enable them to produce their own Canadian-oriented campaigns.

If some companies persist in the practice, then they should be cited as bad corporate citizens. We doubt if there are many responsible companies that would risk this stigma in order to save some money on advertising production costs.

We feel that the people of Canada in general and the business community in particular would welcome such an initiative by our government, in that it would be giving very positive leadership and direction and an ethical basis without resorting to restrictive legislation. It would be the start in the development of a business strategy that could do much to help small businesses and entrepreneurs across the country. And it would help retrieve for Canadians a greater measure of their cultural and commercial independence.

The Effect: The result of this would not only be the equalization of competition so that an equal opportunity of free and fair enterprise can exist in Canada, but foreign firms would have to buy this material in Canada at the same price Canadian firms must pay for the same thing. Foreign companies would then have to spend, literally, millions of dollars from their advertising budgets on a particularly labour intensive, talent intensive area of our economy. This will create a great many well-paying, highly-skilled jobs in the communications industry. It will necessarily sharpen our management, creative and communications skills and, to a far greater extent than it is now, it will put into Canadian hands the opportunity to control and create their own business and cultural climate at least as far as advertising is concerned.

Who Will Benefit the Most? Besides industry in general, the single group that would gain the most by such an initiative is the particularly vital creative community that to a very large degree support their art with commercial opportunities, if and when they can be found: writers, artists, musicians, actors, photographers, movie producers, plus the thousands of people involved in the technical and support services—art, engraving and television production houses, broadcasting, recording, film processing, marketing research, modelling, set designs, choreography, special effects, and on and on through the whole world of art, entertainment and communications skills.

They are the kind of skillful, challenging, well-paying jobs that our young people want. But, as things stand now, only a relatively few will be able to enter this industry and make a satisfactory living. It need not be that way at all.

An infusion of the $8½ million from a single week of television commercials, as noted earlier in the brief, would have a tremendously significant effect on television production and related services. This, combined with our other television commercial production for the year, plus our radio production and, ideally, all advertising production components from other media, would result in the creation of literally thousands of highly-skilled, well-paying jobs.

Eliminating the importation of advertising components would not give any advantage to Canadian firms over foreign firms. That would be discriminatory. Indeed, U.S. firms would still retain a huge marketing edge with all the television, radio and magazine spillover advertising from the States over which we can never have any control. Foreign firms would not, and should not, pay more or less than Canadian firms must pay to do business in Canada. Only when their costs are the same will we have equal opportunity for both free and fair enterprise.

With respect to an emerging Canadian style, the Gray Report states that:

> ...the political and economic strength of a nation consists largely of its ability to create a distinctive cultural, social and political milieu which fosters indigenous initiative and innovation.

Will we be ourselves? Canada is today the best possible country in which to live. We are blessed with extraordinary advantages—huge natural wealth, dazzling natural beauty, nearly limitless space, a variety of races, problems which can still be isolated and solved, an evolving system of democratic government which is among the best in the world. And, what is perhaps most exciting of all, an emerging Canadian style.

Canadians have always had a tendency to flirt with the sometimes overwhelming allure of the American style. But recently we have watched in horror and widespread disillusionment as our American cousins acted and reacted in ways that we believe, perhaps a little smugly, that we could never do. Canadians are emphatically not Americans, and most of us don't wish to be. We are not anti-American, we are simply non-American. Now, lacking a model that we care to copy, we must create our own style. And we are doing it.

We will always be bombarded from across our border with a constant barrage of American style television, radio, magazines, books, movies, advertising and propaganda of every type. We cannot stop it. We would not stop it. What runs in American media can easily be recognized as American and as such stands as a continuous comparison for us to evaluate and accept or reject.

Creating a Canadian style: Advertising does not set out to create a culture, but seeks to be an integral part of that culture, reflecting what we wish it to be in a somewhat idealized manner.

Our advertising should reflect our human condition, our needs, our environment. This will not plunge us into shallow chauvinism. We are part of the world and have no wish to escape it. But we will make a more significant contribution to that world if we participate in our own style.

By importing large amounts of advertising production components, we are not only placing domestic industry at a distinct disadvantage and limiting the creative opportunities for Canadian business and arts, but we are also inhibiting the development of a uniquely Canadian style by passing off American reflections in Canadian media as being our own.

If we are determined to resist absorption of Canada into the general cultural pattern of the U.S and wish to encourage the emergence of our own style, then we should harness the considerable power of advertising and have it work for both our cultural and economic benefit rather than against it in both cases.

The Cultural Effects: When the CRTC established its Canadian content regulations for radio, the fast buck operators who couldn't care less to whom they sold themselves—or us—cried, "Disaster! Canadians can't do it!" The result? The emergence of Canadian recording industry with Canadian talent being heard for the first time and ancillary production services that are thriving. And so, incidentally, are the fast buck operators.

A much greater cultural impact than that could be sustained if we gave Canadian talent the opportunity to have access to their own country in the significant amount of advertising that is not produced here. This opportunity can only be provided by our government.

A little over one year ago Mr. Pierre Juneau, Chairman of the CRTC, warned the Association of Canadian Advertisers that it was important for the members to have all their radio and television commercials produced in Canada. Since that time, according to the ACA's own study, there has been less than a three per cent increase in the number of commercials produced here. It would seem that the perpetuators of this inequity have had fair warning but haven't done anything about it.

The Business Effects: We emphatically believe that this proposal will not cause any undue dislocation of or strain on U.S. companies operating here. In many cases it would merely result in a shift of advertising dollars from the media budget to the advertising production budget. But this is a significant shift because it means the money will be spent in the technology-intensive, talent-intensive end of the marketing spectrum.

Jean-Jacques Servan-Schreiber in "The American Challenge" argued that national sovereignty depends on developing an independent technological and scientific capability. This he described as "the leading edge of technology." In marketing, the leading edge of technology that a country should always retain for itself is the creative input.

This is where the action is, where the ideas and innovation come, where the sparks fly, and there is a premium on freshness and originality and better ways of doing things, the kind of jobs that challenge and demand, the kind of jobs our children want.

The Effects on Advertising Agencies: This would not result in increased business for advertising agencies, but it would result in increased competition. Those agencies, both Canadian and U.S., that are creatively capable will thrive. Others that have grown soft by simply picking up large amounts of U.S. created material will have to beef up their creative departments and learn to communicate as well with the public as they do with their head office, or suffer the consequences.

Advertising agencies tend to be very obedient to the client's wishes. If the client tells them to pick up advertising from their head office, they will generally be quite happy to do it, because it saves them the time and trouble of going through the difficult creative process. If the client tells them to create and produce their own advertising, then they will do this as best they can.

Therefore, it is not just the agencies but the advertisers as well who should be made to play by the ground rules.

Conclusion: We sincerely believe that the overall result of implementing this proposal would be freer trade in a fairer market that more closely reflects a cultural milieu created by ourselves.

We also believe that if Canada is not soon to become simply a marketing module in a multinational society with head offices in New York, now is the time for our government to act.

The Deputy Chairman: Thank you, Mr. Skinner.

Now, perhaps some members of the committee would like to ask questions.

Senator Laird: Mr. Skinner, I want to make sure that you are not proposing a complete ban on foreign-produced commercials. Am I right in that assumption?

Mr. Skinner: No. I am indeed proposing that.

Senator Laird: You are?

Mr. Skinner: Yes, sir.

Senator Laird: That sort of thing invites reprisals. Is it not a fact that we produce a considerable number of commercials in Canada which are exported?

Mr. Skinner: No, sir.

Senator Laird: Well, I am informed otherwise. I do not have the figures, but I have asked for them. You are suggesting that we are not producing any substantial quantity of commercials which are exported.

Mr. Skinner: We are, indeed. From time to time American commercials are produced in Canada, but I do not think that they are produced in significant numbers, sir.

Senator Laird: Well, we will have to get the figures on that later. Speaking of figures, we have another brief, from the Association of Canadian Advertisers Incorporated, who have not yet appeared before us, and they have an appendix containing a rather significant table showing that the production of commercials in Canada has steadily increased from 1968 to the present time. During that time it has increased from 61 to 67.8 per cent. Isn't that a good sign that without government interference the production of Canadian commercials is, in fact, increasing?

Mr. Skinner: No. I could not agree with you at all. I think that is a snail's pace increase. That is an increase of 6 or 7 per cent over four years. I would not agree that that is satisfactory.

Senator Prowse: It is less than 2 per cent per year.

Senator Laird: In other words, you feel it should be higher right now?

Mr. Skinner: Yes, sir.

Senator Laird: And that it should increase more rapidly?

Mr. Skinner: Absolutely.

Senator Laird: In fact, to follow your argument right through, it should be 100 per cent just as soon as possible.

The Deputy Chairman: Do you have in mind a set time in which to reach that 100 per cent, or do you feel you should achieve it in three, four or five years?

Mr. Skinner: I believe that if the government followed the recommendations and guidelines it would come close to that immediately.

Senator Buckwold: I would like to thank Mr. Skinner for a very interesting presentation. I am interested in the "guidelines for good corporate citizenship," and would like you to expand a little. Is it your suggestion that there should be voluntary guidelines, which the government should set and the names of violators would be published as poor corporate citizens?

Mr. Skinner: Yes, sir.

Senator Buckwold: Do you really believe that would be effective?

Mr. Skinner: For the most part I believe it would for responsible companies.

Senator Buckwold: By whom would the guidelines be laid down? Would it be the CRTC, the Government of Canada...

The Deputy Chairman: By means of legislation?

Senator Buckold: ... or through legislation? I am just endeavouring to relate in my mind how these would work. We had experience with them in the wage and price control guidelines, which were really not that effective.

Mr. Skinner: I am more hopeful that our industry would respond better.

Senator Buckwold: You do not believe, then, that these should be regulations laid down by the CRTC in similar fashion to those governing Canadian content?

Mr. Skinner: In my opinion, the CRTC would be the most effective body to implement it instantly because, indeed, they now control the broadcasting industry. However, we would like to go beyond just broadcast advertising because, in our opinion, the same problem exists in print and other forms.

Senator Buckwold: Of course, this committee is concentrating on the impact of TV and radio commercials.

Mr. Ivor Downie, President, Downie Advertising Limited, and Moderator, Agency Forum: That is right, senator, but our group is interested in the impact of all advertising content.

Senator Buckwold: Would you consider the guidelines in regard to this particular aspect of the industry should be in the form of CRTC regulations?

Mr. Skinner: I am not really able to suggest the governmental mechanics for the most effective implementation of the recommendation. It is beyond my competence to suggest whether it should be simply published regulations with which all companies would agree to comply, an act of Parliament or some other means.

Senator Buckwold: I gather from your brief that you suggest some kind of voluntary, goodwill effort on the part of the industry, which I doubt personally would be effective.

Mr. Downie: From the point of view of an advertising agency, it has been our experience that most corporations desire to be good corporate citizens, especially today in view of problems connected with pollution, consumers' associations and women's lib. They do not enter a market, whether it be American, Canadian, French or German, without endeavouring to be good neighbours in the country concerned.

Senator Buckwold: Personally, I would disagree. Sometimes even in connection with the environment and pollution, ultimately regulations involving severe penalties must be imposed.

Mr. Downie: In the end, perhaps that is right.

Mr. Skinner: I would consider this suggestion to be a good first step, in the manner of a warning.

Senator Buckwold: Could this be achieved by a different method of valuation for duty?

Mr. Skinner: That would involve changing the GATT treaty and the mechanics involved therewith, which, from the little I know of it, sounds like a formidable operation.

Senator Buckwold: Normally, an imported product is valued for payment of duty on the costs of production, whereas in this field that is not so.

Senator Prowse: But the payment presumably reflects the cost of the product; if not, it would come under the anti-dumping laws.

Senator Buckwold: Here the payment is really just on the cost of producing a reproduction, which is a very minimal amount.

Senator Prowse: In other words, this might quite properly be described as dumping because the price does not reflect the actual production cost.

Mr. Downie: In broadcasting there is no doubt that CRTC regulations would be the instant method. You are suggesting that we are too soft in our proposal.

Senator Buckwold: I would like to discuss your ideas with respect to the impact on a so-called Canadian identity of made-in-Canada advertising, as opposed to foreign-made advertising. You referred to the cultural impact.

Mr. Downie: There must be an impact on children, in view of the recent children's code.

Senator Buckwold: I would like a more in-depth discussion.

Mr. Downie: Our example in our brief to the Ontario Select Committee on Economic and Cultural Nationalism was the Merrill Lynch commercial. We mentioned that as an outstanding example because the production costs were $90,000. Whether Canadians, Americans or Brazilians see a bunch of bulls—that commercial was shot in Mexico—running across the hills towards them and the sign says "Merrill Lynch is Bullish on Canada", it is not a Canadian or American life style. Think of the Dodge red-neck sheriff saying, "Don't sass me, boy!" Canadians do not relate to that unless they have been to Georgia. That is part of the ability of advertising to illustrate a form of life in a country and reflect what is going on. Americans relate to that type of person. If that commercial were brought here and a Mountie used, he would not say "Don't sass me, boy!" That is a better indication of advertising content and what its effect can be.

Senator Laird: Do you object to a southern accent?

Mr. Downie: No, I do not.

Senator Laird: I rather like it.

Mr. Downie: I object to the red-neck sheriff stopping me down there though.

Senator Buckwold: I think the senator likes it so much that he is going to marry one.

The Deputy Chairman: That is right. It will be this week; it is no longer a secret.

Senator Buckwold: With respect to the question of impact, which I consider to be fairly crucial, we have discussed the following three ideas: one is opportunities for Canadians; the second is the competitive position of Canadians versus foreign-owned firms; and the third is the impact for the Canadian identity, which I believe is important for some of us. I do not believe we have explored those aspects of the problem.

Mr. Skinner: It is a very difficult area, because style by its very essence is full of imponderables. The difference between Canadians and Americans is not that great; we are very similar to Americans. However, when we make a television commercial we try very hard to show the reality as we know it, and we would be showing more Canadian realities than by simply picking up those shown by an American copywriter as American realities. The differences are subtle, however, and again it is purely a stylistic consideration.

Senator Prowse: I would like to discuss the Merrill Lynch commercial as an example. I saw this statement "Bullish on America" first in the United States. It took me a little while to understand it because I do not play the market, but for years I have known that there are bulls and bears. One, I take it, bucks the price up and the other claws it down, if that gives the correct understanding of being bullish on America. I would think that is Merrill Lynch talking to just one segment of the population, to people who know the difference between bulls and bears and its particular application to the investment market.

Mr. Skinner: They are talking to the investors' market.

Senator Prowse: I imagine that our investors use exactly the same terms, so that it would be as effective on Canadian investors as it is on American investors. If it were made in Mexico, where are we?

Mr. Skinner: It was produced by a U.S. production company.

Mr. Downie: We use that commercial to illustrate the production costs.

Mr. Skinner: If you were a Canadian stock broker and you wished to advertise on television, you immediately start out by being down $90,000 to your competitor down the street.

Mr. Downie: To match the quality of that commercial.

Senator Prowse: That is why stock brokers do not advertise on television!

Senator Buckwold: Could we get into the job creation aspect of this?

Senator McElman: Is it any better to have Toronto-produced slop in commercials than American-produced slop?

Mr. Skinner: Yes; at least it is our slop.

Senator McElman: That's fine. Is the industry really showing any indication that it is out to produce something that does not insult the intelligence of the viewer every time he may turn on his set? He is treated as a seven-year old idiot by all those who are producing advertising in this country. In other words, which is best, Toronto-produced slop or American-produced slop?

Mr. Skinner: That is a blanket indictment of the whole industry. I am sorry you feel that way, senator. We try very hard to do effective and rewarding commercials. There will undoubtedly be lots of them that you do not like, but I can assure you that a lot of skill, good taste, and good motives go into making many commercials.

Senator McElman: Is it not true that one of the criteria in producing commercials is to anger people sufficiently so that they will remember?

Mr. Skinner: No, sir.

Senator McElman: Why is it, then, that so many of the people involved in the advertising production game flaunt this myth continuously?

Mr. Skinner: I do not know any professional who does, sir. We go to a lot of expense and trouble to avoid that at all possible cost. I do not know of anyone who tries to irritate or anger their audience.

Senator Forsey: They succeed pretty well.

Mr. Downie: We write advertising; that is our side of the business. The question we used to get was, "Isn't it true that everything you create is aimed at an 11-year old child?" I think you used the number seven. I think the number we used to get was 11.

Senator McElman: It has gone down lately.

Mr. Downie: It is not true at all, sir. I can tell you exactly what we would try to do in the Merrill Lynch commercial. If, indeed, I had the Merrill Lynch account and was trying to appeal to stock market investors, I would try to imagine the people I know who are logical customers of Merrill Lynch that I might be able to sell, or to those coming to Merrill Lynch from some other broker; or your client might be trying to attract people who have never been in the market to come into the market. That is how you write commercials. You do not think of someone's 11-, 14- or 17-year old son in trying to write a Merrill Lynch commercial.

Mr. Skinner: Or any commercial.

Senator Buckwold: I would think that the level of advertising is about equal to the level of programming; but I suppose that is a whole new field.

Senator Forsey: You sometimes get that awful business of those Mexican bandits right in the middle of "The Forsyte Saga." Just as they are at a most crucial, heart-rending moment, you get someone coming on and saying, "Man, that's coffee!" That's an outrageous insult to the viewer.

Senator Buckwold: I would like to talk about the industry that would produce these commercials, and your enlargement of the effect on the industry. We have other briefs, some of which say that perhaps the effect, in so far as job creation and opportunities for Canadian talent in a variety of skills is concerned, would be more limited than we think. Could you comment generally on that subject?

Mr. Skinner: For instance, on that calculation of $8.5 million, if there were another 284 television commercials made in Canada that were not made before, that would indeed employ a good many talents.

Senator Buckwold: Have you any idea of how many might be employed?

Mr. Skinner: It varies. On a good size television commercial it is not an exaggeration to say that you will have 100 people employed, not constantly from beginning to end but involved in the making of a television commercial. It is really quite an industry. There are many people who make a very good living doing this.

Senator Buckwold: In the making of these commercials, we see that 67 per cent are made in Canada. That figure is perhaps a little misleading in the use of statistics. I would think—correct me if I am wrong—that it does not really indicate the price tag. In other words, that 67 per cent would include all very low budget commercials made in Canada.

Mr. Skinner: We have no idea what commercials they are talking about.

Senator Buckwold: It would relate to the impact of the commercial on the time slot which was used, or the number of times it was used. Can you give me any more indication in this field? Sixty-seven per cent Canadian-made does not seem too bad; but my concern is, of that 67 per cent, what is the real meaning in so far as costs, exposure, et cetera, are concerned?

Mr. Skinner: I cannot answer that; I do not know the commercials. We are simply giving statistics.

Mr. Downie: There are no industry figures. We tried to get them for our appearance before the Ontario committee. Those are the only figures that exist. We made our dollar points using those figures. We are not suggesting they are incorrect. I think your point is interesting, senator.

Senator Prowse: Of your advertising commercials, I presume you took selected stations and advertisers and were told that many of the commercials were Canadian produced.

Mr. Skinner: They went through 20 advertising agencies and asked them, "Of the commercials that you had on the air this week"—they could be 50 stations or one station—"what is the percentage of breakdown of Canadian versus U.S. production?" In that week those 20 agencies had a total of 772 commercials, of which 280 were American-produced. The rest were Canadian.

Senator Prowse: It could be interesting to look at the types of commercials that were Canadian-produced. Do you know where the Volkswagen commercials and the Volvo commercials are produced?

Mr. Skinner: The Volvo commercials are produced in the U.S. The Volkswagen commercials are Canadian.

Senator Graham: Is there any particular field in the automotive industry, or some other similar type grouping, from which this 284 figure would come?

Mr. Skinner: I do not know. Again, we have no idea specifically what commercials. There are certain industries which tend to use more U.S. production than others. For instance, the oil and gas industries tend to produce all of their commercials here. I think the reason for that is because they have bigger fish to fry up North and there is no way that they are going to irritate Canadians by running a U.S. advertisement. The cosmetic industry, hair preparation, and that type of thing tend to be solidly U.S. production.

Senator Davey: Mr. Chairman, first of all, I should like to make some inquiries regarding Agency Forum.

You say the membership of Agency Forum is comprised of the principals of 52 such advertising agencies. How many employees, in round figures, would that involve?

Mr. Downie: That is part of a survey which we are conducting, Senator Davey, and it is not yet complete. They range from a one-man shop to such agencies as Darcy McAnnus, and, indeed, Peter Hunter from McConnell is also a member of Agency Forum, and his agency would run into a couple of hundred people. Let me guess and say that there would be a thousand employees involved in the 52 member agencies.

Senator Davey: That is in Agency Forum, not including Montreal and Calgary?

Mr. Downie: That is correct. We are just now starting our liaison with the Montreal Agency Council.

Senator Davey: What would be the total dollar billing of Agency Forum?

Mr. Skinner: It would be very small, senator. In terms of ICA billing vis-à-vis the Agency Forum billing, it would be minuscule.

Senator Davey: I would like to relate back to a question Senator Laird put to you regarding advertising commercial production done in Canada for the American market.

Would the various member agencies of Agency Forum do any advertising production at all for the American market?

Mr. Downie: I know one of our members, a company called Kaleidoscope, has CBS Radio in New York as an American account. That is the only one of which I am personally aware.

Mr. Skinner: Some members do have American clients.

Senator Davey: The point I want to get at is, how much work would these agencies do for the American market?

Mr. Skinner: Very little.

Senator Davey: So that any work that is done is done by the larger agencies?

Mr. Downie: Any Canadian work that is done for the American market?

Senator Davey: Work that is done in Canada for the American market.

Mr. Downie: The U.S. agency would come up and use our production facilities.

Senator Davey: One of the arguments which this committee is going to hear is that there will be a reprisal by the Americans, and the vast volume of work being done in Canada by Canadians and Canadian agencies for the American market will cease to be. I do not think there would be such a reprisal, but if there was such a reprisal, would that be of particular concern to the members of Agency Forum?

Mr. Downie: No, senator. You are suggesting that commercials are created here for the American market, and we are suggesting that that is not the case at all.

Senator Davey: But that suggestion has been made to the committee and, no doubt, will be made again.

At page 3 of your brief you talk about the situation prevailing in other media, and you mention newspapers, magazines, outdoor, direct mail, and so forth. Is Agency Forum doing anything to move in this direction as it relates to the problem of Canadian production?

Mr. Skinner: This brief is a revised version of the brief presented to the Ontario Select Committee on Economic and Cultural Nationalism, and there we talked in terms of all media.

Senator Davey: But you did not make specific recommendations in that brief?

Mr. Skinner: We did not make guideline recommendations.

Senator Davey: Do you have a brief dealing with recommendations for other media?

Mr. Downie: That will be the subject of a continuing committee of Agency Forum.

Senator Davey: I think the point you make at page 3 is perfectly valid. Everyone is talking about it, but no one is doing anything about it.

Mr. Downie: I think we are waiting, senator, for the Province of Ontario committee report.

Mr. Skinner: We are also doing it through such forums as this committee.

Senator Davey: When do you expect that report?

Mr. Downie: It was expected in April, but now it is going to be mid-summer.

Senator Davey: I will direct my next question to the chairman. On page 7 of the brief there is reference to a study conducted by the Joint Broadcast Committee of the Association of Canadian Advertisers and the Institute of Canadian Advertising. Do we have that study, Mr. Chairman?

The Deputy Chairman: We have received that study, Senator Davey, but it has not as yet been distributed.

Senator Davey: I think if the members of the committee could see that study it would be very helpful.

Senator Forsey: Is that this brown document?

The Deputy Chairman: No, we have not received it. I was referring to that one.

Senator Davey: I think perhaps we should get that study.

The Deputy Chairman: Yes.

Senator Davey: I must confess I was a little taken aback, as Senator Buckwold was, at your reference on page 8 to guidelines. Do you not feel we need something more than guidelines? At page 9 you say:

> If some companies persist in the practice, then they should be cited as bad corporate citizens. We doubt if there are many responsible companies that would risk this stigma in order to save some money on advertising production costs.

Do you really believe that? That is kind of naïve, is it not?

Mr. Skinner: That is the best solution we could arrive at, senator. I should like to see a much stronger thing than that, but I do not know how we could do it. That is your area of operation rather than mine.

Senator Davey: But it is interesting that you would suggest that guidelines and a stigma which might attach would be sufficient. I am curious that you would suggest that.

Mr. Skinner: I should like to see that tried. I believe that business will generally respond positively if given good direction. If they realize that if they do not play ball, then they will be stepped on, that would be a first step. I would like to see how business responded to it.

Senator Davey: If time allowed, I would like to pursue that, but I do not think there is sufficient time.

There are two or three other questions I should like to ask. I should like to pursue a line of questioning put by Senator Buckwold.

The people who might disagree with the position which you take would probably argue that the savings which would result from such legislation or recommendations, or guidelines, might not necessarily result in the desired effect which you want, which is increased production of television and radio commercials in Canada. If we had this kind of a guideline, international agencies and others might look to use their money in other ways. In other words, they might go to another media—they might go into print, for example. How do you respond to that? Why are you certain that the money would stay in radio and television production?

Mr. Skinner: That money is being spent for very pragmatic reasons; it is being spent to market their products.

Senator Davey: Yes, but let us take the Merrill Lynch advertisement as an example. If they could not bring that commercial in for $68.40, they might decide, rather than to spend the money on radio and television advertising, to put it into something else. They might not necessarily decide to make a "Canadian commercial". This, again, is an argument that we are going to hear. How do you respond to that?

Mr. Skinner: That would happen. There would be people who would no longer be able to afford television advertising, presumably, if they could not get free television commercials. There would be media shifts, undoubtedly.

Senator Davey: Do you think that advertising agencies have a social responsibility?

Mr. Skinner: Yes, senator.

Senator Davey: I will not pursue that any further.

At page 14 you refer to an "emerging Canadian style." What is that "emerging Canadian style," as it relates to the advertising industry?

Mr. Skinner: It is the opportunity to do work here.

Senator Davey: It has nothing to do with the content of the advertising? I am not as pessimistic as Senator McElman about the content of advertising. He refers to things done in the United States and in Toronto, and so on, as slop. I do not take that point of view. However, I should like to know, along with Senator Buckwold and some others, what this "emerging Canadian style" is. Surely the production of advertising in Canada is not a Canadian emerging style? Let me put it this way: Is there an emerging Canadian style in advertising?

Mr. Skinner: No, not particularly. There is not a Canadian school of advertising.

Senator Davey: Don't you think that there should be?

Mr. Skinner: No, I do not. Our business has a lot of this kind of thing. Fads run through our business, styles of doing things that tend to bring a sameness into a lot of advertising. Something successful will be done and then other less skilled people will start to copy. You see these little fads going through our business.

Senator Davey: Surely, Mr. Skinner, you are not suggesting that we should be concerned, because of increasing work done in Canada, simply for the sake of the people who will be doing the work? Surely, all through your brief you make the point that we are not Americans, that we are somebody else, that for all our friendliness and similarities we are somebody else. Surely, advertising is one way of demonstrating that we are somebody else, but I am afraid you do not seem to think that is happening.

Mr. Skinner: Not in terms of a Canadian school of advertising, as a sort of unique way that Canadians approach the making and the producing of an advertisement. I would be against that sort of thing, simply because it is limiting. In terms of the advertising reflecting ourselves and how we are, I indeed believe it should.

Mr. Downie: The reference to the emerging Canadian life style is just that point. If advertising is a mirror and reflects or assists style, and style ultimately becomes culture, then there is an emerging life style. It is nicer to be a Canadian this year than it was 20 years ago; everybody is "up" on being a Canadian. If the Coca-Cola company decides it can sell Coca-Cola with the theme that was created, "Things go better with Coke," and use that in Australia, the States, Japan or wherever they go, we are not saying that when they come to Canada it will not sell Coca-Cola to Canadians, because it might; but you are going to shoot Canadian actors in the Rockies and Newfoundland, singing about it in our country. That in itself does not make anybody wave a flag about being a Canadian, but it all helps.

Senator Davey: I agree that there is an emerging Canadian life style, and I think it is regrettable that the Canadian advertising industry has not discovered that fact yet, to the extent that it has not.

On page 21 of your brief you refer to the effects on advertising agencies, and you say:

> This would not result in...increased competition. Those agencies, both Canadian and U.S., that are creatively capable will thrive. Others...have grown soft by simply picking up large amounts of U.S. created material.

Would you identify those other agencies that "have grown soft by simply picking up large amounts of U.S. created material"? I think that is a fair question.

Mr. Downie: It is, I guess.

Mr. Skinner: It is a question I would rather not answer.

Senator Davey: If it is not a fair question, I will not put it. I think it is a perfectly fair question.

The Deputy Chairman: Would you care to comment?

Senator Davey: I do not want to persuade the witness. If you do not want to answer it, don't. I am just curious to know who you meant.

The Deputy Chairman: You do not have to answer it.

Senator Davey: Do you have specific people in mind? It is not just a throw-away line?

Mr. Downie: No.

Mr. Skinner: There are agencies in Toronto that, for instance, do not have a creative department; they have no creative capability at all.

Senator Davey: Would you give me an example of that?

Mr. Skinner: There is an agency named Ross Roy.

Senator Davey: That is an American agency.

Mr. Skinner: Yes.

Senator Davey: That is a service agency, is it not, for Chrysler, I think?

Mr. Skinner: Yes.

Senator Davey: That is the kind of thing you have in mind, is it?

Mr. Skinner: Yes.

Senator Graham: Have you ever before conducted a survey such as you refer to on page 7, where you say:

> ...of 722 commercials studied, one third of them or 284 commercials were produced outside of Canada.

Mr. Skinner: This is an ACA study. It is the same one that your committee is going to get. All I have is a single page. They have it from 1968 to 1972. It shows a breakdown.

Senator Graham: You talk about the average production cost being $30,000 per commercial. That is U.S.?

Mr. Downie: No, that would probably be an average here.

Senator Graham: Is the cost of production, the average cost per commercial, in Canada and the United States approximately the same?

Mr. Skinner: No. Commercials tend to be cheaper here than in the States.

Senator Graham: So really you are talking about United States dollars.

Mr. Downie: No.

Senator Prowse: Is that U.S. produced commercials or Canadian produced commercials?

Mr. Skinner: Just hypothesizing, I picked a figure out of the air as a reasonable average cost.

Senator Graham: In other words, if those commercials were produced in Canada that would be the cost?

Mr. Skinner: No. They would probably produce for somewhat less than that, the same given commercial.

Senator Graham: I should like to raise a question with reference to what Senator Laird asked earlier about the time element. You said that you would like to see these proposals put into effect 100 per cent immediately. Do you think that is realistic?

Mr. Skinner: No.

Senator Graham: It would sound more credible to me if you had said that because of technical problems and the lack of trained personnel, the changeovers and everything like that, it would be more realistic to suggest that this would be possible within, say, five, seven or ten years?

Mr. Skinner: Oh no, I would say a much shorter time.

Senator Graham: Or three years?

Mr. Skinner: I would say no more than a year, and that would be the maximum.

Senator Prowse: In a year?

Mr. Skinner: Yes. The biggest difficulty would be companies that have complete United States tools. If you suddenly obsoleted the commercials or said, "You can't use any of these commercials," they would be in a very difficult position, and it would be unfair to change the ground rules quickly.

Senator Graham: This troubles me, because it seems to me that if you had technical and trained personnel, professionals, ready to go to work tomorrow and the government instituted a law saying, "Look, from now on it is 100 per cent Canadian," even the changeovers and accounts would take longer than a year.

Mr. Skinner: Perhaps I am optimistic, but I would think it could be done in a year.

Senator Graham: You have to put these things in the bin and start producing them.

Mr. Skinner: In the recording business they found at first that there was a fair amount of dislocation. We simply did not have very many good sound-recording studios, and there was that sort of problem. In the short time since then we have developed a good many sophisticated sound studios, and the talent has come up to fill them as well.

The Deputy Chairman: Some doubts have been raised in certain quarters that in Canada we do not have the proper facilities or skills to translate the marketing concepts of advertising agencies to the television screen. What is your experience of that? Could you comment on that?

Mr. Skinner: I deny it totally. Yes, we do have the skills; we can do it as well as anybody in the world and compete with the very best.

The Deputy Chairman: Right now we have the facilities, the skills, the artists and whatever we need?

Mr. Skinner: Yes, sir, we do.

Mr. Downie: Yes.

The Deputy Chairman: Now?

Mr. Downie: Yes.

Senator Denis: You say you have the skills. Do you not admit that in many advertising programs Canadian artists always imitate the American programs in some way? Do you agree with that?

Mr. Skinner: This happens; it indeed happens.

Senator Denis: Do you also agree that some English programs, but mostly French programs, use too much, what I would call slang, or *joual*, or this is used too often? Do you admit that in those English or French programs they use slang language, whether it is for advertising or the program?

Mr. Skinner: We do now in our own advertising very often write it in the way people speak rather than in precise English. Again, people do tend to be somewhat sloppy in their syntax and grammar.

Senator Denis: Is it a good thing that sometimes we get foreign advertising production in order to have a higher degree of quality? Suppose that in an advertising program in Canada you have some advertising from France in the French language, would it be a good thing, an incentive for the Canadian French, for the French Canadian artists and so forth, to have a better language and in the end get better programs in Canada than we have now? If we could have more of those well done French advertising programs, there would be more competition and the programs would increase in value?

As far as American programs are concerned, those programs are followed by the customers. As you said before, it is no good for Canada, they do not buy those programs. They buy those programs because it is an incentive for customers to buy their products. Senator Forsey spoke about the silly song. You admit that most of those advertising programs are done with silly songs, with no musical value at all, just a silly noise, in order to create an effect so that people will remember the product they are advertising by those songs. If Canada is left alone, with no competition from America or other countries, because it is a small country do you not think that it would be a kind of monopoly of the Canadian? I am talking about jobs that would be created by putting a ban on that. But as we see it, if you agree that many of the Canadian programs in imitation of American, are made of slang, joual, if they were alone, there would be no more competition.

Mr. Skinner: I do not think there will be a lack of competition, sir. It is a pretty heated up area, and it is always going up.

Senator Denis: There is a lot of skill in Canada. You said that most of our programs are imitations of American programs.

Mr. Downie: It is not competitive on that basis, sir. An American company that is bringing commercials into Canada does not ask an agency here, whether it be American owned or Canadian owned; they do not ask Canadian writers and artists to prepare a campaign and ask Americans to prepare one, and then compare them and take the one they want. Your idea of competitiveness in that area would not work.

Senator Prowse: As long as they can sell the product, through the effectiveness of the advertising, and as long as it is satisfactory, that is what counts.

Mr. Downie: Exactly, sir. And there is a tendency on the part of American corporations that import commercials to look on Canada as the northern module of their complete marketing strategy. If there is, we get back to an emerging Canadian life style. If there is not an emerging Canadian life style and these people look upon us as just the same as Americans, that will have a deleterious effect on whatever we have that is going.

I could answer your question on slang or joual. We are, I guess, one of the few agencies that have a con-

sultant semanticist and he constantly tells us that usage determines language. There is no more—and I am speaking of the English language in Canada only—slang; it is usage. If the people we are appealing to speak that phrase that way, that is the way we should use it.

The Deputy Chairman: The advertisers will tell you what to do.

Senator Prowse: And the public.

Senator Forsey: It is the lowest common denominator in many cases.

Senator Denis: It is anything that catches the imagination of the people, in order to buy the product.

Mr. Skinner: That is true.

Mr. Downie: I do not think "anything" in the sense that "anything goes".

Senator Denis: That is why we have not got high quality advertising.

Mr. Downie: I think we do have high quality.

Senator Denis: If the skilled people in Canada, or artists and so forth, were left alone, with no competition at all from outsiders, they might increase their fees or their salaries to the point where it would be very expensive for people to advertise.

Mr. Downie: The competition, senator, is in selling Coca Cola against Pepsi Cola. It is not an American commercial against a Canadian commercial. It is how much you have sold at the end. That would still exist. Nothing we are suggesting would eliminate that. Creative people see good creative work from around the world. We go to seminars; we go to the New York art directors' show; we get the graphic annuals and whatever books and publications are out; and we see what other countries are doing.

Senator McElman: Mr. Skinner, forgetting for a moment the production quality but taking the content quality that is produced by Canadian firms, do you feel that it grades well against that produced by American firms for Canada?

Mr. Skinner: Oh yes, it does.

Senator McElman: Do you feel that your industry is making its best contribution? You speak of culture and the content of Canadian culture, continually through your brief. Do you feel that your industry is making a useful contribution to the enhancement of Canadian culture—not identity?

Mr. Skinner: Ours is primarily a pragmatic industry. We are here to sell the product. That is our main function. But indeed we do, I believe, have a responsibility to the public, in terms of taste and various other things.

Senator McElman: What I am asking you now is, do you believe that your industry, now, is making a useful contribution to the enhancement of the Canadian culture?

Mr. Downie: To the degree that it is a "follow" industry.

Mr. Skinner: We believe that the advertising industry is a key element in making our whole system operate successfully. Its importance there is really in helping commerce to thrive and create competition in different products and choice and variety and these things. That is the kind of direct contribution that the advertising industry makes. I do not make claims for advertising to be the leading cultural agent in the country, or anything like that. It is not.

Senator McElman: There is great emphasis in your brief on this aspect of it. What I was trying to get at is, what is your contribution today, is it improving and will it improve, according as greater opportunities are given you? What evidence is there that it might improve?

Mr. Skinner: By increasing the opportunities for people to do the work, for Canadians to produce the commercials, we are automatically increasing the number of skills amongst the people by giving them work in that industry.

Senator McElman: Basically, I guess the question I am getting at is whether you are really interested in Canadan culture or in "bucks".

Mr. Skinner: Well, I think the very fact that we are here, sir, shows that we are indeed interested in culture, because here we are spending our time and it won't change our operations by one dollar.

Senator McElman: If the objectives you speak of are reached, you say it won't?

Mr. Skinner: It will not change my personal business.

Mr. Downie: Nor mine.

Mr. Skinner: Indeed, it puts me in a certain amount of jeopardy, because I have American clients.

Senator Laird: What will it do? Will it create more employment?

Mr. Skinner: That is right. The communications industry now is stunted in Canada.

Senator Laird: I cannot follow your argument that it would not increase your profits. I mean, if you have a monopoly of anything—

Mr. Downie: We do not produce television commercials, senator.

Mr. Skinner: We do not make television commercials.

Senator Laird: In other words, you just take them and sell them.

Mr. Downie: In my case, I do not do television work at all.

Senator Laird: Perhaps it is an unfair question to ask you two, then, because what I am thinking in terms of is, if you have a monopoly in terms of production of anything, then the chances of your making more money are 100 per cent.

Mr. Skinner: It is the production houses that produce the commercials.

Senator Laird: If it affects you directly, it affects some people whom you, in effect, represent.

Mr. Skinner: No, we use the production houses; we buy their production services.

Senator Laird: Okay. They are going to be better off. They would be better off if there were a complete ban on the importation of commercials, obviously.

Mr. Skinner: Absolutely.

Senator Prowse: There would be more Canadian production houses.

Mr. Skinner: Absolutely, there would be more Canadian production houses.

Senator Prowse: Could Canadians afford to pay the money it is going to cost? Are we not faced with the problem that the American branch plant here keeps bringing in material which is produced in the United States for a market of 250 million people, which is the North American market; whereas the Canadian advertiser, in many instances, has to produce a commercial which he can use only for a Canadian market?

Mr. Skinner: That is right.

Senator Prowse: It is only when we have access to the American markets and branches down there that we can start to even it up and maybe even get ahead a bit. So, if you put this ban on, would we really be helping the small people who cannot come in and produce a commercial of their own anyway, unless they can get it for $64.80?

Mr. Skinner: That is right, sir. It is not going to suddenly make television production cheaper for a Canadian company to have a television commercial produced.

Senator Buckwold: I think we should always remember that the solely Canadian company, one without an American branch operation, is at a very serious disadvantage in trying to compete with its American counterpart which produces its commercials in the United States and shows them in Canada in competition with a Canadian company.

Senator Davey: That is the story of Canada.

Mr. Downie: That is right, Senator.

Mr. Skinner: We would not stop Canadian companies going down to the United States, or around the world or wherever they wanted to go, to shoot television commercials. Nor would we stop an American company coming up here to shoot a television commercial.

Senator Laird: That would not help our employment situation.

Mr. Skinner: No.

Senator Laird: I think that is the important thing.

Senator Buckwold: These commercials would not be shown in Canada.

Mr. Downie: We would be even in that respect, because they would not be shown here.

Mr. Skinner: With respect to your comment earlier about the number of American commercials that are shot up here for the U.S. market, we would allow that. We would say, 'By all means, come up and do that, if you want." We would also allow our production companies to go anywhere in the world they wanted to go to make commercials. We are not saying, 'You have to do it in Canada." It should be a Canadian company...

Senator Prowse: If we are going to keep the Americans out, how do we get them to let our people in?

Mr. Downie: We are talking about shooting commercials as opposed to showing them on television.

Mr. Skinner: There is no suggestion of keeping the Americans out. They could come up here and shoot any commercials they wanted to.

Mr. Downie: They may need snow in June, for example, for snowmobile commercials.

The Deputy Chairman: I am sorry to interrupt, gentlemen, but we have passed our time limit. There is another agency to appear before us.

I wish to thank you very much for appearing, Mr. Skinner and Mr. Downie. You have been very co-operative.

Mr. Skinner: Thank you, Mr. Chairman.

Mr. Downie: Thank you, sir.

The Deputy Chairman: Honourable senators, our next group of witnesses represents the J. Walter Thompson Company Limited, of Toronto. We have with us Mr. Donald Robertson, the president and director of the company. Mr. Robertson is accompanied by several of his colleagues, and I will ask him to introduce them in a moment.

First, Mr. Robertson, on behalf of the committee let me welcome your delegation. Thank you very much for accepting our invitation and for having sent us your brief both in French and English. We appreciate that very much.

Now, Mr. Robertson, would you kindly introduce the members of your delegation so that the members of the committee will know them?

Mr. Donald Robertson, President, J. Walter Thompson Company Limited: Thank you, Mr. Chairman. On my immediate right is John Cronin, Executive Vice-President of our Canadian operation. Next to him is Dr. Jerrold Beckerman, who is Vice-President of J. Walter Thompson Company Limited and Director of Consumer Information for our Canadian company. Next is Mr. Richard Kostyra, who is a Director of our Canadian company and is also Director of Media and Broadcast Production for our company. My Australian friend, Mr. Tony Miller, is a Vice-President and a Group Account Service Director

for our Canadian operation. Last, but not least, is Mr. Philippe Fisette, who is a Vice-President of our operation and Director of Canadian Broadcast Production.

I have invited my colleagues along today for two specific reasons: one is that I have a tendency to talk far too much; the other is that within our agency they are senior experts within our advertising field, and I will ask them to participate during the presentation as well as during the question-and-answer period. That is the major reason why they were brought along today.

The Deputy Chairman: I understand, Mr. Robertson, that you intend to present a ten-minute summary.

Mr. Robertson: Yes.

The Deputy Chairman: After that, what is your intention?

Mr. Robertson: If I may address myself to that, Mr. Chairman, originally we intended to present an eight-minute summary, but because we have basically had four days to present this brief, which we prepared from scratch, we would beg the committee's permission to read it as quickly as possible, because we would like to cover our views, and because there are some additional views that we would like to present to the committee; but we promise we will go as quickly as is humanly possible.

Mr. Chairman, senators, ladies and gentlemen, we are deeply honoured to be with you today and to have this opportunity to express our views on this important issue.

As the second of many presentations that you will hear in the course of the next few days, we hope to concentrate on facts, some judgments and some concerns that will aid the committee to reach sound, equitable conclusions which will further the very worthy objectives expressed in Senator Buckwold's motion.

To begin our presentation to you I wish to read a statement of our overall commitment on this subject: If as a result of a full investigation it is concluded that the Canadian economy, culture, creative expression and business conditions will truly and equitably benefit by accelerating the established trend to more Canadian content in broadcast production, J. Walter Thompson would do all within its competence to support the implication of such a program.

Furthermore, we would like to offer to the Senate committee at this time access to our research and any other expertise that we may possess to assist you in establishing the dimensions of the cost, cultural and employment benefits of greater Canadian content in this area.

Now, if I may, I shall start on page 1 which has a statement of our position and qualifications. Dealing first of all with our position, J. Walter Thompson, as a member agency of the Institute of Canadian Advertising, is a signatory of the current Association of Canadian Television and Radio Advertisers' agreement, including section VI, paragraph 601, which reads in part:

> The parties to this agreement agree that every effort will be made to encourage advertisers to produce television and radio commercials in Canada.

By definition, therefore, as a signatory of this agreement, we are already endorsing the intent of this committee's motion. Certainly our own overall production trends reflect our endorsement of this commitment.

Similarly, based upon findings from a continuing survey from the ICA/ACA Joint Broadcast Committee, which has been referred to earlier:

> There is a positive trend towards Canadian-content commercial production in both English and French Canada.
>
> The current level of straight Canadian-content TV commercial production exceeds the successful 60 per cent minimum CRTC Canadian-content guidelines for Canadian television program content.

However, it is recognized that the survey findings are not based upon the equally important question of media dollar placement for these commercials nor is the trend a dramatic one; however, the findings at least reflect a natural growth pattern in Canadian-content commercial production development.

Let me now address myself to the question of our concern. To accelerate this trend is a desirable objective, but our single caution is that legislative action may, at this point, be premature. This statement is based purely on questions and thoughts arising from our own internal discussions on this issue. While our experience may be too narrow, our concerns too cautious, our enthusiasm too ambivalent, we nonetheless believe that the magnitude of this complex, multi-faced subject does require further input and thought prior to any permanent action being implemented.

What are our qualifications? J. Walter Thompson has been in Canada 43 years. We employ 228 people, of whom 221 are Canadians or landed immigrants. Seven are U.S. citizens, none of whom are in management positions.

Our creative department consists of 57 people, whose first language is either English or French.

We have 62 clients representing many industries, both large and small, and several nationalities including Canadian-owned, American-owned, English-owned and Dutch-owned corporations.

It is estimated that we are No. 2 or No. 3 in total size in the Canadian agency business, and that we are the largest television buying agency in Canada. We are creating and producing more advertising in Canada than ever before.

During the period from January 1 to December 31, 1972, 91 per cent of our individual ads and commercial units that we scheduled for our clients in all media were created and produced in Canada, supporting 80 per cent of the dollar volume media placement in that year. Our 80 per cent media placement level in 1972 is well above our 1969 level of 72 per cent. So we certainly have a trend at J. Walter Thompson.

Based upon such data, we must assume that we are one of the major employers of Canadian writers, artists, producers, and performing talent in the Canadian advertising agency field.

We thought it would be helpful for the committee to get a brief understanding of what an advertising agency is. This is our definition.

An advertising agency is an independent business organization, consisting of a variety of communication specialists with diverse experience and interests, that supplies marketing, advertising, promotional and research services to clients seeking to locate and convert prospective customers for their goods and services. While all advertising material is the property of the advertiser, and all creative, media and budget decisions rest ultimately with him, advertising agencies do serve as both advertising consultant and executor for their clients. As a result of exposure to many industries and manufacturers, it is possible that advertising agencies can provide a varied viewpoint to the committee.

We hope that we can also provide an objective viewpoint because we represent both Canadian-owned and foreign-owned clients, and all of these have different needs and resources. Unlike some agencies, we do not have any financial interest in separate commercial broadcast facilities. Thus, from one standpoint, we do not have any vested interest in the question of more or less production in Canada. That is certainly the case from one standpoint. Furthermore, we do not see a "competitive new business edge" for ourselves through increased or decreased Canadian-content pressures or legislation. But we feel that we must represent our total client's needs and interests, and that as a business, and as businessmen we must be concerned about rising operating cost implications.

I should now like John Cronin to take us through our examination of the current climate.

Mr. John Cronin, Executive Vice-President, J. Walter Thompson Company Limited: Mr. Chairman, I am going to cover four areas: first, the current climate, as we see it, for a ban or for the increasing of Canadian content in commercials; secondly, the dimensions of the problem, as we see it; thirdly, the effect that there might be in terms of competitive advantages for foreign-owned companies; and, fourthly, the employment potential.

In terms of the analysis of the present climate, the precedent established several years ago by the CRTC on Canadian-content in television programs and its resulting acceptance and success is of major significance. Many of the expressed concerns and criticisms towards these guidelines at that time have been reduced or eliminated. It is submitted that the deliberate and well-thought-out preliminary investigation and planning by Mr. Juneau and his associates was of major importance in the successful implementation of these guidelines.

We feel that the business and social climate is, in many ways, more positive today towards Canadian content. This follows the CRTC guidelines on programming. We believe that many factors have contributed to this environment—an increased understanding and respect between ACTRA, l'union des Artistes and advertisers and advertising agencies, more experienced and productive talent at the advertiser, agency and production and performing level, with the latter assisted greatly by the CRTC requirements; an improved understanding by business and marketers of the Canadian life style and culture; and as Canadian management has grown in abilities and performance, more management autonomy is being gained in this country.

I would like to touch on some future complications, as we see them. We feel there is some valid concern by business as to their advertising effectiveness and costs of proposed production if changes are implemented.

Good advertising does affect consumer sales. Increased sales for a company or an industry can directly affect manufacturing employment for that company, industry or the economy overall. Thus, employment effects at the primary and secondary manufacturing levels must be borne in mind. Some manufacturers must raise the question: "Will these changes in my advertising assist or hinder my sales and employment levels?" Manufacturers must view their future sales and profit expectations with caution, particularly if costs increase and profits decrease, due to external or operating circumstances. We elaborate on these costs in the next section.

In this section we try to define the size of the problem. The committee will need to determine the size of the problem, in terms of dollars. If we assume that the value of non-Canadian production to Canada is between $6 million to $7 million—which is a reasonable estimate by us—who will benefit and by how much? It is to this problem that our presentation is addressed.

Senators, we have provided an exhibit which indicates how we arrived at that $6 million to $7 million figure, which differs somewhat from figures we have previously heard. It is based, however, basically on the known amount of national television advertising carried on in this country and an assumption which we have made on the basis of the 90-to-10 relationship between media time cost and production. The 90-to-10 per cent relationship is generally accepted in the industry. It is also based on the estimate of Canadian production in ICA-ACA figures, which is 68 per cent Canadian content. We therefore arrive at a figure, based on 30 to 32 per cent, of roughly $6 million to $7 millions. That is as far as we can ascertain the amount of money involved in this issue.

Some economic implications of changes. Who is going to pay the bill in terms of this amount of money? What are the real cost implications of this motion? Additional production budgets can come from many sources; additional advertising budgets; lower media budgets with higher production budgets; and lower trade and consumer promotional allowances. They can, of course, come from lower profits and from passing on any additional costs, partially or in full, to the Canadian consumer in the form of higher prices.

Some alternatives in terms of budget switching, as we would see it that should be considered are: Will the guidelines force a shift of funds from trade merchandising allowance programs into commercial production costs at a time when the retail trade in this country is demanding more promotional funds from manufacturers in order to be able to maintain desirable consumer pricing levels?

Will the added cost of producing advertising in Canada be ultimately passed, partially or in full, on to the Canadian consumer? We frankly do not know what will happen, but we believe that these cost implications are significant enough to warrant delay for further study.

I would like to address the question of what could happen in terms of shifts to other media. Will a shift of media advertising dollars into commercial television

production affect the quality of Canadian television and radio programming and job opportunities in this industry if such funds are diverted from normal advertising time purchase? Remember, the time purchase provides the station with 90 per cent of its revenue. Will it affect the print industry's editorial quality and staffing if advertisers are forced to spend all their available advertising budgets in one primary non-print medium, i.e., television? Or will it affect the film industry's revenue and job opportunities if ordinary television time and production funds are directed into other non-electronic and probably perceived to be less expensive vehicles? Obviously, any significant departure of funds from the various time-space-production suppliers could have adverse effects on others. The danger, as we see it, is to guard against merely transferring jobs and funds without any positive, overall benefit. A diversion of normal media funds from Canadian-originated programs or Canadian newspapers into commercial production requirements could affect present financial support of prime media vehicles for Canadian and local culture identity.

Mr. Chairman, we also have an exhibit in connection with that particular subject. It is a mathematical hypothesis, in which we have taken a $1 million budget and worked it out in several ways to ascertain how an advertiser could react if he wanted either to spend additional money or, as is more likely, could not spend it and how he might switch it around between media.

Will a Canadian content rule change affect our Canadian broadcast volume from the United States? This question was raised earlier. What is the volume of program and commercial production done in Canada for use in the United States by United States manufacturers? We have an estimate that the current volume is at least $6 million. We have arrived at this information by confidential conversations with leading Canadian production houses. I do not wish to disclose to you precisely which companies do what business, but I suggest that you discuss this with the leading Canadian production houses because there are some significant volumes being done, of at least $6 million.

Senator Prowse: Do you take the responsibility for the figure of $6 million?

Mr. Cronin: We take the responsibility for the figure from our sources.

It is possible, we believe, that the United States and United Kingdom markets are still untapped by Canadian producers and agencies and should and can be more aggressively pursued. This is the main conclusion: Hopefully, the current pressures toward Canadian content will not interfere with the current or future volume from other countries.

We have a suggestion in terms of a positive reaction to all this. What about a United States-Canada trade agreement for the film industry? Is there an opportunity to explore for the advertising, film and talent industry a trade agreement between the United States and Canada similar, at least in spirit, to the "Auto Pact" trade agreement now operating in the automative market? Or is there an opportunity, by encouraging multinational advertisers, to produce a pre-determined amount of commercial production in Canada whereby we might experience a desirable balance with minimum cost implications and increased employment for Canadian talent? We do know from our experience, senators, of at least two of our clients who actively produce in Canada commercials for use in the United States.

Senator Petten: Is that at your agency?

Mr. Cronin: That is at our agency.

Other economic considerations: Will commercial production regulations adversely affect the rate of "new consumer product" introductions into Canada? The reason we make that statement, senators, is because there is only a certain finite amount of marketing dollars available. Any diversion of advertising dollars to one purpose will limit another area. New product introductions are extremely costly and are often done by U.S. commercials.

Will limited production funds result in fewer, more often repeated commercials for each advertised brand? That is simply a matter of using one rather than five, and irritation obviously can develop.

Another positive area to be considered, in our opinion, is: Should film tariff policies and charges be updated to reflect current concerns? As far as we understand it, these tariff policies are quite old and may not reflect today's climate.

I would like to address myself to across-the-board legislation: Will it eliminate foreign-owned companies' advantages? We believe that there is more merit in studying new advertising content guidelines or regulations if they are applied to individual industries. In some industries, such as the automotive industry, where foreign-owned companies represent most or all of the industry's volume, there is no obvious individual competitive edge between foreign-owned companies when it comes to advertising content vis-à-vis Canadian-owned manufacturers. There are, however, other categories where Canadian-owned and foreign-owned manufacturers do compete directly and where resources, imported advertising savings, outside-Canada research and development facilities and new product development opportunities all give the foreign-owned subsidiary at least a perceived competitive advantage. An across-the-board ruling, we feel, would not necessarily be fair to business or even practical, from a cost standpoint.

As to the employment impact of changes on employment, will many new jobs be created or will the people demand simply accelerate and the supply of good, experienced talent remain approximately the same, resulting in spiralling compensation costs? We cannot speak first-hand for the talent and production industries, but we do know that there is a shortage of good, experienced creative people in the agency business; and this has already resulted in creative salaries increasing at an abnormal rate.

In recent years the advertising agency business has recruited fewer young people because of the cost of training and the uncertain return on this investment. It is time, we believe, that the agencies began again to develop new talent, possibly through some modest government assistance. We are currently examining the feasibility of a creative training unit for J. Walter

Thompson in Canada, following our experience in our British office.

Finally, in terms of jobs, do we really have a great pool of talent in Canada? Do we really have a great pool of talent or will the same top talent merely do more and more commercials? We believe that positive action can be taken if a study were conducted with film producers, unions, agency writers, artists and producers, to determine their views on this subject, and what recommendations they would have to build a larger, better qualified talent pool.

On the question of creation versus duplication, when existing, tested, and proven U.S. commercials are available to their subsidiaries in Canada, many of these advertisers may merely duplicate these commercials and produce them in Canada at the lowest possible cost. Granted that this will create production jobs, but are we really employing our human resources as productively as we should be? If we do not create but merely reproduce, this would appear to do very little to further the development of Canadian culture.

I would now ask Mr. Fisette to address the committee on the cultural aspects, and I believe he is more comfortable speaking in French. I think the French text starts on page 12.

Mr. Philippe Fisette, Vice-President and Director of Canadian Broadcast Production, J. Walter Thompson Company Limited: Thank you, Mr. Cronin.

(Translation)

Mr. Chairman, I would like to say a few words about the cultural question and the effects of legislation, as discussed in that brochure.

Is the business world beginning to pay more attention to its cultural responsibilities? The business world, today, is well aware that it is to its interest to pay attention to cultural questions. Most businesses realize that publicity is subject to local marketing conditions, to the practices and preferences of the consumer and to marketing forecasting. Although there are still some exceptions to this rule, they are more and more rare. As publicity methods and practices gain in discipline and a sense of perspective they will produce far more effective advertising.

A definition of Canadian culture. Perhaps it would be a good thing if all the various factors affecting the Canadian cultural identity and way of life were more clearly defined. The creators and the executives could, then, use the definition. We have called attention to the positive contributions and activities in the following areas: Canadian content in programs and in the media in general, publicity, the film industry, show business and the arts in general. But we still have to contend with influences from outside Canada: the consumer-film industry, television programs, printed matter such as books and magazines, the world press and certain practices or a certain philosophy of some foreign companies. All these factors contribute to imposing on Canadians foreign ways of life and an alien culture. French-speaking Canadians possess a culture which is even more distinctive because of their language, their origins and other historical factors. The recognition of these cultural differences and the fact that they have been made known have greatly contributed to a better understanding of the needs and aspirations of the French Canadian community by the business world. Very often, however, the question: What is Canadian culture? still receives no valid response. And yet, as the CRTC has recognized, the strongest influence in our culture today is that diffused by television programs.

The consequences for Quebec. We recognize that constant progress is being made in the creation and production of French language publicity, adapted to the culture and specific needs of the market concerned. We can now affirm that between 25% and 30% of the publicity produced for French-speaking Quebec is created specifically for this market, whereas in 1968 only 10% to 15% was original.

At this point, with your kind permission, I would like to elaborate on what I mean by "original production" or "creation." I am speaking of productions conceived, created, written and carried out by Quebecers for Quebec. The rest can be divided up as follows: 60% French adaptations of publicity originally created in English and 10%, I believe, of literal translations. We are given a text and we simply translate it, and there you have your "commercial." But coming back to what is written here: We hope to reach a goal, which I believe is quite realistic, within five years, of from 40% to 50% original French creations. It is stated that original French production has doubled within the industry in the last five years, and it should be able to double again between now and 1978. A certain amount of concern has been expressed at the idea of possible Federal government legislation concerning Canadian content in advertising. This could lead to a diminution of original French productions because, as you know, advertising budgets are limited. With a view to reducing production costs it could well be that there would be fewer original French productions, fewer productions in Quebec and proportionately more adaptations coming from Toronto. It is difficult to say whether such fears are grounded or not, but it would be very unpleasant for all concerned if they had to revert to a policy of translating and adapting English advertising for the French market. I would say that great improvements have already been made in the area of French language communications in advertising. However, much more still remains to be accomplished before the demands of the market can be adequately met.

Thank you.

Mr. Don Robertson will now draw his conclusions from the preceding remarks.

[Text]

Mr. Robertson: We believe that the desire to accelerate Canadian-content commercial production is a positive and attainable goal. Hopefully, targets and actionable programs can be jointly developed by industry and government to meet mutual needs. Current attitudes and activity certainly point in this direction.

A need for further information appears to be recognized by both the committee and other invited representatives of the broadcast industry. From our viewpoint, we certainly feel that more questions must be asked.

As a personal comment, we regret that we have more questions than answers to submit to your committee. We have found, from preparing an advertising program for one of our clients, that it is immeasurably easier than dealing with this complex subject.

We have drawn some questions that relate to what we have presented to you today. We believe that it is essential that the committee establish the size of the problem in dollar terms. This should be evaluated in the light of a possible loss in revenue by a transfer of funds from media investment, for all French commercial production, or a reciprocal cut-back in film production purchased by U.S. firms for use outside Canada.

I will make one comment on the film production purchased by U.S. firms for use outside of Canada. It is a commitment and the intention of J. Walter Thompson—and we believe it should be a part of the program for most agencies and production houses in Canada—to go after U.S. business. We have agressively pursued U.S. business that has nothing to do with J. Walter Thompson south of the border. We believe that we have a great product to offer advertisers in Cleveland, Boston, Albany, Buffalo and so forth. Personally, we would be concerned if there were any problems encountered when we crossed the border. We think there is a viable market across the border for good Canadian talent.

Going on: that additional data and viewpoints be secured from individual advertisers, agencies, economists, broadcasters and commercial production firms to determine cost and employment implications. Again, we are an agent of our clients. We do feel that these questions should be discussed with individual advertisers.

Continuing: that a manpower deployment and cost analysis be initiated to determine the quantity and quality of incremental jobs that could result from increased commercial production in Canada; that individual industry categories be examined to determine ownership, competition and advertising differences and needs within each individual category; that the spirit of the Auto Pact trade agreement concept for the advertising film industry be investigated at the multinational advertisers, government and union levels; that the present film tariff policies and charging be reviewed, with the intent of making it contemporary with today's government, consumer and business needs; that industry work with the government to develop a manpower development program for the creative, production and performing talent industries; that a clearer definition be attempted in more closely defined, desirable Canadian cultural and life style guidelines; and, to reiterate, that contact with both Canadian-owned and foreign-owned advertisers take place to determine their views and needs on this subject.

We thank you for your patience and your interest in listening to our remarks. Both myself and my colleagues would welcome any questions that you would care to direct to us.

The Deputy Chairman: Thank you, Mr. Robertson. Are there any questions?

[*Translation*]

Senator Lapointe: I would like to put my question in French, if you please, to Mr. Fisette. Concerning the 25% or 30% of the publicity you produce for Quebec, what proportion...

Senator Forsey: What page of the report?

The Chairman (President): Page fourteen.

Senator Lapointe: I would like to ask what proportion of the 25% or 30% of publicity produced for Quebec is asked for by the United States, comes to you from American companies? Are American firms interested in having advertizing copy, publicity prepared for Quebec in French, or does that demand only come from Toronto?

Mr. Fisette: Well, let's say that I don't want to answer obliquely, let me just state the facts. I think that is all depends on who our client is. If we have an American client there, that is, with whom we have business in Toronto, well, the request comes from Montreal, that is that the French is done there and if the client, when he sees the copy, considers that it would be more advantageous for him to have an original creation for the Quebec market, then, at that point the 25% or 30% applies. So, it is not perhaps for me to say to what extent, or what proportion of that percentage is American or English Canadian publicity. That is, no doubt, the question that you wished to raise, Senator Lapointe, is it not?

Senator Lapointe: Yes.

Mr. Fisette: Well, I believe my colleagues could answer that question, and tell you what percentage of our publicity is American and what percentage is English Canadian. But I think that—if you will allow me, again—I think that everything that is advertized here in Canada, in English, is almost necessarily advertized also in French. I think, therefore, that I would be ready to quote the figure of 25% or 30% for all Canadian creations, that is all that is done in French.

Senator Lapointe: Yes, but what I wanted to know, exactly, is whether American companies or businesses are interested in having different advertisements for French-speaking Quebec?

Mr. Fisette: Yes, certainly, certainly. Absolutely.

Senator Lapointe: Good. Thank you.

[*Text*]

Mr. Anthony Miller, Vice-President and Group Account Director, J. Walter Thompson Company Limited: Perhaps I can expand on that. Sophisticated foreign-owned advertisers are very conscious of the differences in French Canada, perhaps more so than the Canadian advertisers, and normally have their production dollar to afford separate French advertising, which they do, because they believe it is a better way to communicate to the French Canadians. They do it with increasing effectiveness, which is one of the issues being raised here, and that is that, if the cost of commercial production does go up it will tend to skew towards English Canadian production rather than French Canadian production, because, in many cases, French production is a luxury which they can afford because they are getting the English advertising at lower cost, perhaps, than they

would had they to reproduce it entirely in Canada. They are very definitely aware of the advantages of separate French advertising.

Mr. Robertson: As an advertising agency for a number of clients which do original advertising in Quebec, we would be very concerned if there was anything that would take that trend away. It has taken us a long time to reach the stage of acceptable advertising in Quebec. We are going in terms of original production because there are individual needs which the marketers must face. Certainly, from J. Walter Thompson's standpoint we do attempt to encourage our clients at all times to understand the French Canadian market and to develop advertising that will meet the requirements of that market. This is a very positive situation in our minds.

Senator Davey: Mr. Chairman, I have a series of questions I should like to ask, but there is one which I think should be asked now, and then I can turn the questioning over to other honourable senators. I refer to page 1 of the brief, where the statement on your position and qualification is set out. You say that J. Walter Thompson is a member agency of the Institute of Canadian Advertising. Is that correct?

Mr. Robertson: Yes, senator.

Senator Davey: And then you go on to say that as a member of the ICA you are a signatory of the current ACTRA agreement.

The first question I should like to ask you is whether every agency that is a member of ICA is a signatory of the current ACTRA agreement and, secondly, what the ACTRA agreement is.

Mr. Robertson: Senator, I believe every ICA agency is a signatory of that agreement. In terms of what the total ACTRA agreement is...

Senator Davey: What does ACTRA stand for?

Mr. Robertson: The Association of Canadian Television and Radio Artists.

Senator Davey: The point I want to make, Mr. Robertson, is that J. Walter Thompson, as a member of ICA, is a signatory to that agreement, and every member of ICA is a signatory to that agreement and, presumably, every member of ICA would thus subscribe to the indentation which follows, and that is:

> The parties to this agreement agree that every effort will be made to encourage advertisers to produce television and radio commercials in Canada.

I do not want to lead you somewhere you do not want to go, but is it safe to say that all agencies who belong to the Institute of Canadian Advertising subscribe to those words?

Mr. Robertson: I can only assume, senator, that if they are a signatory they must subscribe to that philosophy.

Senator Davey: That being so, I should like to read from this week's issue of *Marketing*, July 9, page 1, and I quote:

> The agency industry is split over the Senate inquiry into whether all broadcast advertising in Canada should be made in Canada.
>
> So wide is the divergence of opinion that the Institute of Canadian Advertising has turned down an invitation to appear at the 3-day hearing starting July 10 in Ottawa.

Then there is a question:

> "Individual agencies have different views and there was no way we could get a consensus," explained ICA president Jim Reeve, president of McCann-Erickson, Toronto. But the ICA refusal has surprised many agency presidents.

The story then goes on at some length. Does not the statement that you make on page 1, the assertion that you were a signatory to the ACTRA agreement, not make a mockery out of the position taken by the president of ICA? That is a tough question, and I do not want to put you on the spot, but it seems to me that it is inconsistent with what the president of ICA says.

Mr. Robertson: Senator, you have an extremely valid point. I am a director of ICA. I was not a part of the executive committee meeting of the ICA at which the decision was made not to make a submission to your committee. The basic reason for this decision, as I understand it, was because of the ownership differences between American and Canadian advertising agencies. My own personal view, and the view of our agency, was that the ownership of the advertising agencies had absolutely nothing to do with the question that the Senate has proposed to us, whether you are American-owned or Canadian-owned, whether you have Canadian clients or American clients, or a combination.

However, because this ownership question, as you are particularly aware, has created such division and concern within the ranks of the advertising agency business, people could not get together on this question. They are signatories. I believe most of them believe in the ACTRA philosophy. I believe most of them emotionally want more and more advertising created in Canada, but the ownership question, whether we are American-owned or Canadian-owned, has unfortunately split the industry on questions that are necessarily addressed by people who have, hopefully, an interest in Canada at large.

Senator Davey: I would like to come back to this later, but I want to make two comments here. Again I would like to stress that the members of ICA, by signing the ACTRA agreement, subscribed to these three lines on page 1 of the brief submitted by J. Walter Thompson. Secondly, I would like to say, having raised the subject, that the presence here of this agency and Mr. Robertson reflects great credit on them. I was aware that Mr. Robertson was a director of ICA. I may not be as generous in the subsequent questioning as I have been so far, but I would like to congratulate them for coming, particularly in view of this situation.

Senator Laird: May I point out to Senator Davey that these words quoted from the ACTRA agreement are what the lawyers call precatory words. There is nothing binding there.

Senator Davey: I do not know what precatory words are.

Mr. Robertson: I believe the reason the words are so cautious is because as advertising agencies we cannot tell our clients what to do too frequently, if we intend to remain their advertising agency. The agreement, which I presume took at least two years to write, in terms of three lines, was that we would do everything possible to encourage our clients to produce television and radio commercials in Canada.

Senator Laird: Precisely.

Senator Prowse: I should like to ask a supplementary question following on the discussion. I am not sure whether you or Senator Davey said that the division in ICA was on a matter of ownership. Not being familiar with what this is all about, I had to come to a conclusion, and I would like to be sure that I am correct. Did that mean what I thought it meant, that because they were American-owned companies they felt they should not be coming and giving advice to the Parliament of Canada?

Mr. Robertson: No, sir.

Mr. Cronin: We are American-owned.

Senator Prowse: I know you are, and I know you came. I just wanted to know what ownership has to do with it.

Mr. Robertson: The ICA is made up of Canadian advertising agencies and American-owned advertising agencies.

Senator Prowse: I see. In other words, it is a North American organization; international really.

Mr. Robertson: No, it is Canadian. It consists of agencies such as ourselves, who are an international agency, in 26 countries. There are advertising agencies that are completely Canadian-owned. The Canadian-owned advertising agencies have the viewpoint that we have unfair advantages. We have certain attitudes in terms of our staffing, our clients, the standards that we modestly believe we have, and we believe we can make a good contribution to the Canadian advertising agency scene. There are two differences. It has nothing to do with American companies not wanting to be represented. That is the farthest thing from our mind.

Senator Prowse: This is what I wanted to clear up. I am glad I asked the question.

Senator Buckwold: First of all, like the other senators I thank you for a very sophisticated brief, probably due to Mr. Beckerman, who comes from Saskatchewan, and whom I know very well.

Mr. Robertson: Senator, I was born and raised in Saskatchewan as well. Jerry and I are a great team.

Senator Buckwold: I hope that our Saskatchewan relationship, which has always been so pleasant, will not be disturbed by some of the questions I may ask. Obviously you two fellows have lived in Toronto just a little too long! That is perhaps somewhat facetious. I gather from your brief that you agree with the objectives of this particular study.

Mr. Robertson: Yes, sir.

Senator Buckwold: As a long term objective. You are cautioning the committee, I think quite rightly, about various problems that may be created as a result of an impetuous action that could disturb the delicate balance in the advertising industry. I would like to suggest to you that in the brief you have been just a little bit ambivalent. You have thrown out the bogey of what will happen. Yet on the other hand you have said, "Look how nice it has been as we have moved along without any of these dire predictions coming true." You have said to us, "You do this and you disturb employment, you upset advertising budgets, you will see a shift in media expenditures, a division of expenditures. You will see a diminution of new product promotions," and all the other kinds of dangers as you have predicted. Yet on the other hand in your brief you say in headline, "Made in Canada commercials get big boost." I appreciate that one may be precipitous and the other may be taking its time.

What I am suggesting is that you have been a little unfair in some of these predictions, because in fact we have seen more and more money going into television stations as advertising revenue, as I look at the figures; we have seen no decrease in the quality of advertising, which you have warned about.

You went to some pains to say that the advertiser is concerned with his sales, and if he has a Canadian production it could affect the sales. On the other hand, you say you are trying to sell American advertisers to use Canadian facilities and talent because of the excellence of that talent and facilities. I am trying to relate what you have warned about to what has happened. Again I recognize the fact that you will immediately say that one has been a fairly slow procedure and the other could be faster. As I say, I am disturbed at the way you have tried to relate this so far as the industry may be concerned. Do you have some comments on that?

Mr. Robertson: While I am thinking of an answer, my Irish friend will answer that directly.

Mr. Cronin: If we gave the impression that we felt Canadian production would be less effective and injurious to sales, that is an incorrect impression. I think we were talking about the possible impact on profit because of increased costs.

Senator Buckwold: If I might just interject, you say:

> Good advertising does affect consumer sales.

Then you go on to refer to the concern of the advertiser. That is where I get that.

Mr. Cronin: Yes, in the context of the total mix of his marketing dollar. In pointing out what could happen, we are simply pointing out that perhaps a narrow-gauge look at the effects in one small industry, which is highly susceptible to the major effects, because it is a very small industry, could in fact mean, if you enacted a ban, for instance, as was mentioned here, that you would divert, while your purpose might be to create employment or to create artistic talent or to nurture artistic talent in the electronic media, and you might in fact be accomplishing an entirely different purpose. We simply raise

those matters and the others as areas that we believe you should investigate. We are not drawing conclusions from them.

Senator Buckwold: I am not commenting on the answer, but I want to get it on the record. You say there are some industries that are naturals for American-made television. You have indicated, for example, the automobile industry, because they are foreign owned, yet we find a great divergence in the automobile industry. Some of them are prepared to spend their money in Canada. I understand that Volvo produces its commercials in Canada—or is it Volkswagen?

Senator Laird: Volkswagen.

Senator Buckwold: Volkswagen, pardon me. I am mixing them up, whereas Volvo does not. Volkswagen produces its commercials here. Can you tell me which of the large companies, that is to say, the big three automobile companies, produce their commercials in Canada?

Mr. Cronin: Senator, I would like to comment on what was stated about Volvo and Volkswagen. I do not know either company intimately. The Volkswagen advertising happens to be about the most famous advertising in the world, and I believe that a certain portion of it is produced in Canada; but I imagine that the Volkswagen people follow a similar pattern to the other automobile manufacturers and that much of the advertising we see here is not produced in Canada.

Senator Buckwold: Where would it be produced?

Mr. Cronin: It would probably be produced in the United States, in New York. It would be educative to speak to the advertisers themselves, but I believe the patterns of the various big three manufacturers or the Japanese manufacturers would tend to be quite similar. From our experience, we know that the client we represent produces a certain amount of Canadian advertising, in terms of units, probably as much as he imports, but in terms of costs I do not think that is the case. I would imagine that General Motors produces a certain percentage, and probably a fairly substantial percentage, of its advertising in Canada, and I would imagine that the same thing applies to the others.

Senator Buckwold: Doesn't that refute the statement you made in your presentation, that this was a natural for American advertising?

Mr. Cronin: Perhaps it was taken otherwise by the way I read it, but as to those three questions raised in your motion—as far as I recall, the effect in terms of employment, the effect in terms of culture, and the possible competitive advantages enjoyed by a foreign owned company—we were taking the automotive industry to illustrate them. On the question of the competitive advantage, there could be none, because they are all foreign owned. Therefore, there is no Canadian manufacturer who in that huge industry is being jeopardized by unfair competitive advantage. That was the reason for quoting the automotive industry.

Senator Buckwold: I have two more questions. One involves the so-called bogey of higher consumer prices. Would this not be a concern involving all advertising? It could be said that when you spend a million dollars on advertising it raises the price of consumer goods. That is what some consumer people say. On the other side, the advertisers say that they sell more products and that, therefore, in fact the unit cost could go down. Would that be true?

Mr. Cronin: I think, senator, that we listed that as the last of the series. My personal view—and I think it is shared by my colleagues—is that because of the amounts of money involved, in a general sense I doubt if there would be a great deal of effect on consumer prices. As you look at specific industries, however, for instance, the industries in the health and beauty care field, where substantial advertising-sales ratios are maintained, where up to 30 per cent of your sales cost can be advertising, if these companies had to increase their advertising cost by 10 per cent, as we are assuming there is a 90 to 10 relationship, that would have a definite effect, either on their profits or on their distribution or on the consumer prices, and if they could not pass those increased costs on to consumer prices they would probably be badly affected in business.

Senator Prowse: There would be a 3 per cent change there. If advertising costs go up, it would mean a 3 per cent change in cost.

Mr. Cronin: Which would be significant.

Senator Prowse: That would apply to cosmetics, and to detergents as well?

Mr. Cronin: In many of those package goods categories, the advertising-sales ratio is very high.

Senator Buckwold: My last question. We have a representative here who comes from Australia, Mr. Miller.

Mr. Miller: Yes, sir.

Senator Buckwold: It is my understanding—I am getting this from hearsay and not having in fact read it in a publication—that Australia, as a country, has this kind of regulation in which they insist on production of the commercials in the country. Can you comment on that?

Mr. Miller: I cannot give you any accurate personal comment on that, as I have not worked in the Australian advertising field; I have been in this country and the United States for ten years. Within those limitations, I believe they do have regulations—I think we have copies of them here—but it is basically a ban on the importation of advertising. The intent, I can only assume, is these very different cultural values which they are trying to generate.

Senator Prowse: Have you had any results of this?

Mr. Miller: I cannot quote any.

Mr. Robertson: We have some information from our Australian office regarding Australia. This is a judgment statement. We believe that it was easier to effect legislation on imported advertising in Australia, firstly because American or foreign owned companies were in

there much later than they were in Canada. As a result, the kind of advertising that was required for Australia, would be to announce a new product, as opposed to Canada, where the product may have been in Canada for 20 or 30 years or for 5 or 10 years. It is highly possible that on an individual advertiser basis, or an individual brand basis, it was much easier to facilitate, for some clients we share in the United States and in Canada.

Our advertising is different, because either the product has not been on the market long enough, or else the market position is considerably different. There is one client we are dealing with and his market share in the United States is about 30 per cent; it is a highly competitive industry. In Canada his market share is 60 per cent. As a result, the kind of advertising we do in Canada is primarily demand advertising—that is, to stimulate the consumption of the product overall—and we hope we will get 60 per cent of that bigger cost. In the United States they have to be very competitive. So we cannot use their advertising in the United States, because it is irrelevant. We have to build the market in Canada; they do not have to build the market in the United States but to take business from their competitors.

In the case of Australia, with the little I know of Australia, I believe the brand development for many foreign owned companies is significantly lower than the brand development that exists in Canada. I would say that was one of the reasons it was much easier to do this in Australia than if it was done in Canada.

Mr. Miller: In executional terms, I think it should be pointed out, senator, that that regulation came into for about the time that television started in Australia, in the late 1950s. So it was never brought in over the top of certain conditions, but was initiated at the start.

Senator Buckwold: And they were too late.

Mr. Miller: I am not suggesting that. I am saying it was easier for them to implement it then than if they tried to implement it now.

Mr. Robertson: For the benefit of the committee, we certainly could get information from our Australian counterparts and send this to the committee. We have access to that information.

Senator Buckwold: It would be helpful.

An hon. Senator: And for other countries, too.

Senator Graham: Mr. Robertson, could you explain to us the ownership of J. Walter Thompson in Canada?

Mr. Robertson: Yes, sir. We are 100 per cent owned by J. Walter Thompson Inc., a company that is located in the United States, that does business in 26 countries, that employs 6,700 people, and is the largest advertising agency in the world. We are a wholly-owned subsidiary. However, as opposed to a few years ago, our management is completely made up of Canadians, or Irishmen, or people from Winnipeg, Manitoba!

I am on the board for our American company in terms of the management committee for the United States, because we have so much more management experience at this particular moment than we have in the United States. I am also ex-officio member for our European and international operation. For a Saskatchewanite, I am becoming truly international.

Senator Graham: You were talking about your Canadian agency doing business across the border in the United States.

Mr. Robertson: Yes, sir.

Senator Graham: I think you were alluding to the fact that you probably had clients in Albany or Cleveland or some place like that. Could you give us an idea, perhaps even on a percentage basis, of your total volume during the year and how much of that would be in the United States? And, conversely, could you give us some idea of what kind of percentage of the business of J. Walter Thompson in the United States is in Canada?

Mr. Robertson: All right. In terms of J. Walter Thompson's U.S. business in Canada, in terms of the pie that we have, 40 per cent of our business is directly connected with J. Walter Thompson U.S., where we share a client on both sides of the border. The remaining 60 per cent is made up of either advertisers which J. Walter Thompson International services but which J.W.T. U.S. does not service, or international advertisers which J. Walter Thompson does not service anywhere around the world. For example, Libby, McNeil and Libby. Then we have many Canadian-owned corporations, and some very fine ones like Dare Foods, Labatt Breweries and so on. So we have really, I guess, a 30-30-40 split in terms of the balance of our operation.

Senator Davey: Is that the number of clients or the dollar volume?

Mr. Robertson: That is the dollar volume, senator.

In answer to your question on our interest in the United States, Senator Graham, we started a program in the early part of this year. We took a look at the border markets, the kind of advertising agencies that they have, and we compared them to the resources that we have in Canada. It turns out that we are one of the largest advertising agencies outside of New York City within a certain circle. Many of the advertising agencies in Buffalo and Rochester and so on are relatively small and many of the clients we have met would like to use the facilities of a larger advertising agency; but they certainly cannot afford New York servicing. Suddenly, they find out that there is a reasonably good advertising agency which is just 90 miles away or 110 miles away.

We have made a number of new business solicitations. We are slightly interested in that area for a number of reasons. It is certainly a growth opportunity for us. It is a chance for us to grow in other categories rather than just the categories which we are in, and quite frankly it is an opportunity for us to bring some money back to Canada. J. Walter Thompson, since 1957, has not repatriated one single cent to the United States. All money has been retained in Canada. But our view is that there is a market. There is an exciting market for Canadians, to go with the resources that they have. And I am not just talking J. Walter Thompson; I am talking good Canadian agencies as well. And it is an unexploited market for the kind of skills and enthusiasm and the

kind of people we have in Canada, when it is directed to the border stations. I am not talking about going into New York City or L.A.

But our work is not complete. There is a great deal of enthusiasm, but we have not picked up that much business. I think our business is approximately $400,000 in the equivalent billings at this point. But our assessment is that there is a pretty good sized market for us and we think we should be there as a Canadian operation.

Senator Graham: You used the word "servicing" with respect to Buffalo and some of those areas where you are doing business, but it seems to me that ordinarily one would expect your New York office would be servicing those clients. That leads me then to ask a question about production costs, and this relates back to the previous witnesses who talked about $30,000 per commercial. We wondered whether that was an average cost per commercial in Canada or the United States or North America.

Mr. Robertson: Senator Graham, I think Mr. Cronin, who up to a year ago, before we gave him all sorts of titles, was our creative director for Canada, could answer that.

Senator Graham: The previous witnesses also talked about that "week that was", during which they took a sampling and came up with a figure of $8½ million which was lost to Canada as a result of buying commercials from the United States. If that figure is accurate and if you multiply it over a 52 week period . . .

Mr. Robertson: No, sir, I do not think they intended that.

Mr. Cronin: I would not imagine they intended that, sir.

Senator Graham: Would you just answer the first part of my question, then.

Mr. Cronin: In terms of production cost, Senator Graham, because of investigating the U.S. market potential, we have established that we can produce commercials in the city of Toronto at an average 30 per cent less than we can produce commercials, or that somebody can produce commercials, in New York. So this is an obvious sales tool that we do use when we approach banks, et cetera, in New York State, because there is a major cost saving for them if they produce their advertising in Canada.

However, in dealing with certain companies we have also undertaken to do their production for them, at least a proportion of it, in the United States, because they have some of the same concerns. They believe they should retain their money in the United States. So we have produced in Canada for New York State clients and we will be producing in New York for New York State clients. We believe there is about a 30 per cent differential Canada to the U.S., and it is a good deal for an American advertiser to produce in Canada.

In terms of the survey that was done by the ICA-ACA, that survey was taken in a week in October. October, November, December are the heaviest advertising periods of the calendar year. So I think you could assume that an average day in October would be a heavy advertising day in terms of the numbers of advertisements presented on the air. The figure, which I quoted to you, of $6 million to $7 million, we arrived at simply mathematically. I would assume, because of the coincidence of the two figures, that probably there is somewhere between $6 million to $8 million involved in this subject.

I would further point out, though, that that money is in a sense hypothetical, because—and this is the point I think we were trying to make in the brief—in the usage of that money nobody could determine that that would be used in the Canadian-television-film or acting-talent fields.

Senator Graham: Mr. Chairman, I have one more question which relates to the training of personnel. We talked about the skills and whether these skills were available in sufficient quantities in Canada.

I am just wondering, Mr. Robertson, as a matter of interest, whether or not J. Walter Thompson in Canada is doing anything outside of its in-house training program, which I assume you have, in the way of funding scholarships or bursaries, or any such thing as that, for people who show a particular bent in this direction or show that they might very well have skills which would help the industry generally in Canada.

Mr. Robertson: Senator Graham, we have had a bursary program for five years, I believe. It rotates between universities. I believe that it is true that in 1972 we had a bursary for a French-speaking business student and an English-speaking business student, not because we wanted to split the language, but because there are different needs in terms of training for our Montreal operation and for our Vancouver operation in this particular regard.

Mr. Jerrold Beckerman, Vice-president and Director of Consumer Information, J. Walter Thompson Company Limited: In this regard, I served on an advisory committee to the University of Toronto School of Business, advising on marketing courses. We are frequently asked to go out and give guest lectures at universities, primarily at business schools. This might involve one hour, one day or several days. We also have some programs where we invite students to come in and visit the agency and take tours.

Mr. Robertson: One of the major problems over the last number of years, and we do not have the answer to it, is that the advertising agency business, as Senator Davey certainly knows, is a highly competitive one. At one point in time, about 15 years ago—and this is the reason I was able to get into the business—a number of agencies had training programs. What happened was that as soon as you received that one year or two years of training, the agencies that did not have a training program immediately offered you more money and more opportunity. With the declining profit trend facing more advertising agencies, as opposed to the boom years of the 1950's, more and more agencies said, "We will train people, but if you are going to take them away from us, then we will not train them. We will take your people." So what happened is that there has developed a rather vicious circle in terms of, "We raid you and you raid us." And the long-term problem is that there are not enough young people coming into this market, and our assess-

ment of this training unit is to say that we think that we have some responsibility and that perhaps we have to start training our own and we have to take our chances on being raided. But somewhere down the line we will have the situation where there will not be any advertising people if everybody is going to raid everybody else. I think this is something that is certainly a philosophy, and we were worried as to whether it is completely practicable. But a young fellow trying to get into the advertising agency has a very difficult time. We are a service business and as a result clients want a bright Tony Miller. They really do not want a 22-year old chap who has just graduated from university, perhaps with honours. They say, I am your client; I want a Tony Miller." This has created extremely difficult problems from the client servicing standpoint.

From the productive standpoint, employment in the advertising agency business as compared with five years ago is at best static. It may be below the number of people in the industry as compared with five years ago. Here again it is because of business and because we have to put more and more senior experienced people against our business. We have a figure that we use in the advertising business which is based on a number of people you have per million dollars in billing—per million dollars of advertising that you spend for your clients. This is going down in all countries in the world. In most countries employment in advertising agencies is going down. I can speak specifically of the United Kingdom where they had 20,000 people in the advertising industry five years ago and now they have 10,000 people. Even in J. Walter Thompson's case, I believe we had as high as 12 people per million dollars billing five years ago and now we have six people per million dollars billing. The major difference is that now we are a much better agency because we have much more experienced people, and we also make a bigger profit.

Senator Buckwold: It would not be because you are working harder?

Mr. Robertson: We are certainly working harder, but we are also making a profit whereas when we had 12 people per million dollars billing our profit certainly was not anything to write home about.

Senator Laird: But you also have inflation there, haven't you?

Mr. Robertson: Yes, sir. Our salary costs are much, much higher than they were five years ago. But I think the agency business is making more productive use of good people than it did before. But our concern now is where are the young people who are going to replace us coming from? At some point some agency—if not the industry—has to bite the bullet and say, "We will try to make a commitment within the resources available to us."

Senator Davey: But isn't it possible that some of the thousand young people are working for the 52 agencies in Forum. I think you would agree that there are many more agencies in Toronto now, and there may be fewer people working for the bigger agencies. But in terms of individual shops surely there is a much greater number now than there was five years ago.

Mr. Robertson: Yes. According to the ICA they estimate we have 5,600 people in the industry today. Five or six years ago they estimated that we had 6,000. So, despite the fact that we have more agencies and our operations are all bigger, I believe the talent pool is still below the level of five years ago.

Senator Davey: When you look at the national list, there are many more agencies.

Mr. Robertson: Oh, yes, I think so. But I think that many people who were not suitable to the business and who were not contributing to the business are not in the business any more. I think there are significantly better management and business practices being applied in the agency business than was the case ten years ago. The aura of an advertising agency 10 or 20 years ago was one wherein you slapped your client on the back, and you took him out for a drink and you made sure he loved you. Compared with that, today we work terribly hard. If we cannot please our client by the work we turn out, I really do not think that all the entertaining in the world will make any difference. That difference eliminated a lot of people who were not prepared to work hard and to be smart and to apply their God-given skills to the job they set out to do.

Senator Davey: This is a very leading, motherhood sort of question, but I shall ask it in any event so that you may have the opportunity to answer it. What is the attitude of your agency towards these smaller agencies? I am not speaking here of your attitude towards their brief or their attitude on the issue concerning us here, but what is your basic posture towards these one-man, two-man, five-man agencies?

Mr. Robertson: I am glad you asked that question, and I should remark that I warned you beforehand that I do too much talking. Our attitude is extremely positive. This is a first-hand impression.

Senator Davey: You would never raid their clients?

Mr. Robertson: Everybody is going to raid everybody, for goodness sake. But I was very fortunate that two months ago I was invited to the Canadian Forum group to participate in one of their meetings. It was one of the most stimulating evenings I have spent in five years. They may be small, but they are extremely good businessmen, and they are certainly on the floor in terms of doing the very best advertising possible. Certainly from a J. Walter Thompson standpoint, and, I would submit, from the standpoint of any other agency, we can learn as much from Brian Skinner and Ivor Downie as they can learn from us.

Senator Davey: Do you think that Brian Skinner has the opportunity to pick up business in New York State the way you did? When you made your presentation I wrote down your words and you said that, "This has nothing to do with JWT south of the border," but I think that the very fact that you carry the JWT name means a very great deal.

Mr. Robertson: Yes. There I meant that it did not have anything to do with J. Walter Thompson in terms of J. Walter Thompson saying, "Go after that account," or,

"We will help you land this business." We are working with the largest bank in New York State. The only people that know these people are ourselves, because Mr. Cronin went there and knocked on the door and was invited into this fantastic boardroom and said, "I am Jack Cronin from J. Walter Thompson, Canada, and I would like to talk to you about us doing your business in Canada." That was the reference to that statement.

Senator Davey: Then on page 4 you say:

> Unlike some agencies, we do not have any financial interest in separate commercial broadcast facilities.

Would you agree with me that agencies should not be allowed to have separate interests in any media? It is not allowed in the United States, so far as I know. Surely it should not be allowed in Canada.

Mr. Cronin: In media?

Senator Davey: I do not believe that advertising agencies should own a radio station or a newspaper. That is my position and I am wondering if you agree with it.

Mr. Cronin: I believe it is generally accepted that if there were a conflict of interest...

Senator Davey: Yet it is allowed in Canada.

Mr. Cronin: Those are production companies, senator, not agencies.

Senator Davey: I thought there was an agency which owned part of a broadcasting station?

Mr. Cronin: That was a reference to owning production companies, which I do think is acceptable.

Senator Davey: On page 1, at the bottom of the page, you make reference to the fact that 68 per cent of all English commercials surveyed exceeded the successful 60 per cent minimum CRTC Canadian content guidelines. It seems to me that is like adding apples and oranges. I do not think that you can argue that the 60 per cent CRTC program requirement has any relationship at all to the advertising content. Otherwise, why would you come here and say that you are in sympathy with the objectives of this committee? I do not think there is any valid correlation there.

Mr. Cronin: The correlation, senator, is again in one of the questions which concern you, the development of Canadian talent in a cultural sense. In terms of Canadian programming and advertising production, very often the same talent is involved. That was the reason for relating the two. I agree that in terms of size and skill there is no relationship.

Senator Davey: You consistently in this report, which I recognize as being very good, support Mr. Juneau in the position he took. Yet, at page 2 you say, referring to advertising:

> To accelerate this trend is a desirable objective but our single caution is that legislative action may, at this point, be premature.

I may say that is the argument which we heard endlessly from the private broadcasters during the hearings of the Special Senate Committee on Mass Media. The fact is that if Mr. Juneau had not acted, Canadian content in broadcasting simply would not have increased dramatically, although it may have increased somewhat.

Perhaps I may ask a supplementary question, again related to Mr. Juneau. You know very well, because some of you attended the ACA meeting, that he made a suggestion that perhaps your industry should come forward with increased Canadian content. In the interval Canadian content has increased, according to the group we heard previously and statistics of which you are aware, by 3 per cent. Therefore, if you really believe the good things you say about what the CRTC is endeavouring to do in this country, to which I certainly subscribe, as you know, then surely you must agree with the remarks of Mr. Juneau at the ACA meeting two or three years ago. Surely, also, you must be appalled, as at least some of us are, at the miniscule development of Canadian advertising production since then. Surely you must also agree that without the action taken by Pierre Juneau Canadian content in television and radio broadcasting would still be in the dark ages.

Mr. Cronin: In terms of a partial answer to your reference to page 2:

> To accelerate this trend is a desirable objective but our single caution is that legislative action may, at this point, be premature.

You certainly know more about this area than we.

Senator Davey: About which area?

Mr. Cronin: About how the CRTC guidelines were implemented. Our view, however, is that having gone through this exercise in a reasonable amount of depth, particularly in the last five days, a direction on studying whether we should ban U.S. commercials has really only come to the fore, in my opinion, in the last six or nine months. It was probably a secondary issue at the Senate committee hearings we attended, the primary issue being ownership. Therefore, other than the meeting here today and to some extend the Senate committee meeting in January or February of this year, that is all that has been said.

Senator Davey: But, surely, Pierre Juneau made the suggestion three years ago at an ACA meeting? That was the first reference.

Mr. Cronin: All I am submitting is that in terms of the questions that we have posed, the thoughts that we have put into our brief and, as I said, we would have much preferred to have offered our recommendations in 10 succinct statements, that we believe there is still much thought, content and investigation to be developed. I think the subject has been treated rather superficially to date and the committee is saying it thinks there is a problem, the pros and cons of which it desires to consider in order to determine steps to be taken in connection with it. In terms of a single-minded approach, this is the first time in my opinion that this has been done. Therefore we only say we think there is a need for further documentation.

Senator Davey: I really do not wish to be argumentative, but I would like you to comment. This is exactly the argument we heard from the private broadcasters in connection with Canadian content.

Mr. Richard Kostyra, Vice-President, and Director of Media and Broadcast Production: Private broadcasters at that time were considerably below the 50 per cent Canadian content in prime time and were probably around 25 per cent. We are submitting that the Canadian content of commercials at this point is in excess of 65 per cent. Therefore we are now in excess of the requirement of the legislative action taken by the CRTC.

Senator Davey: You were in excess of that requirement when Juneau made the statement at the ACA. It has increased 3 per cent since his statement.

Senator Forsey: Look at page 5. It repeats "guidelines", and "guidelines," but surely you mean regulations rather than guidelines? It is perfectly clear that in some cases it has been used with a great deal of ambivalence.

Mr. Cronin: Senator, we meant regulations, but we just happened to have five authors.

Senator Forsey: It would be greatly conducive to the working of this committee if words were used more carefully.

(*Translation*)

I congratulate Mr. Fisette on the linguistic elegance of the French version. It is far better than the English version.

[*Text*]

The French version is very much better and quite beautifully prepared, whereas the production in English sends my hair standing on end in various places, one of which is the loose use of the phrase "guidelines" when you really mean "regulations".

Senator Prowse: Let us not use the word "regulations" if we can get away with "guidelines".

Senator Davey: At page 3 you say that:

> During January 1—December 31/72 period, 91% of our individual ads/commercial units that we scheduled for our clients were created and produced in Canada, supporting 80% of our dollar volume media placement in that year.

In other words, your agency is moving in the direction which the committee suggests is desirable.

Mr. Robertson: Yes.

Senator Davey: Rather dramatically.

Mr. Cronin: We should not mislead you, senator. That 91 per cent is all our print, radio and television.

Senator Davey: But, Mr. Cronin, the thrust of J. Walter Thompson, as is apparent from its presentation, is that you espouse the position and advise going slowly. However, you indicate that you yourself are moving in that direction. I put this question to you: Why are you moving in that direction?

Mr. Cronin: Our clients are moving in that direction along with us.

Senator Davey: Why are they moving in that direction?

Mr. Cronin: I think they get good advice.

Senator Davey: But why do you give them that advice?

Mr. Robertson: One major reason for the trend of J. Walter Thompson, this being a subjective expression as most of mine are, is in my opinion that we have better people than we had five years ago. Those people are better trained in looking at the Canadian marketing situation and what is available to us from the U.S. or Canada. In my opinion our trend is extremely good in the province of Quebec, because we have people, due to skills and interest and having lived in Quebec, who have a much better understanding of the province than was true, certainly of our agency, several years ago. Many of us worked in our Montreal office. Jack and I did. You get people who know the market more intimately, hopefully, as their disciplines develop, as you have better people, as you have more information. Dr. Beckerman is responsible for a department that we call Consumer Information. That was created by J. Walter Thompson. I believe we are the second agency in the world to have created a Consumer Information Department to advise our clients of the positive effects of consumerism. Three and a half years ago, before we put this in, business in general was saying "Ralph Nader is bad. Consumerism is bad". Our attitude was, "Consumerism is very good."

Senator Davey: I think that is a worthwhile initiative. I applaud you for it. But let us talk about the Canadian identity.

Mr. Robertson: The major thrust is that we get better trained people, that we get more information, that we determine the differences in the Canadian market place. It is very easy to go to clients and say, "We think you have got to do a Chiclets commercial for these reasons". The U.S. market has absolutely no relevance. Here is the competitive edge that you have in Canada versus your competition. We think we should do advertising in Canada to meet those needs.

Mr. Miller: If I can add to that, as you well know, the key criteria for any successful advertising agency is the effectiveness of the communication that produces on behalf of our client. That effectiveness is measured in terms of the extent to which we sell goods and services to the Canadian consumer. Our target audience is the Canadian consumer. I think J.W.T. in conjunction with its clients, spends up to half a million dollars in research to determine what the Canadian consumer wants to hear about any particular goods or service. We find more and more that Canadian creative, as we call it, is working better against those consumers than American creative. If that is true, like any smart businessman recognizing our criteria, we recommend it. Our clients are becoming increasingly sophisticated and saying, "If you can support it, of course, we will not pick up the savings of U.S. production. We will go to something that has been proven to be more effective in selling goods and services in Canada."

Senator Buckwold: Is this not a complete refutation of most of the point that you have raised in your brief, of the dangers of Canadian production?

Mr. Miller: No sir, it is not. The point I am trying to make, senator, to answer Senator Davey's point, as to why this trend is happening in J.W.T. above the industry

average, I am suggesting that we are taking a hard look at communication differences, advertising from U.S. versus advertising produced in Canada, and we are finding out more and more—not because of quality of commercials per se, but marketing differences, product differences, things that the Canadian government will let us say in Canada that they will not let us say in the United States, and vice versa; and more and more natural evolution of Canadian advertising is resulting. It is just good business sense in some cases for that to happen. In other cases, I can assure you, American-produced advertising works just as effectively as any Canadian-produced advertising, and more clients are saying, "Think of the dollars that we are saving."

Senator Laird: Doesn't the location of the broadcast have something to do with it? I will give you some ammunition. When you say, "Go slow," I am with you, because coming from Windsor I have in mind particularly the problems that arise from border stations in this connection. A Canadian production of an ad might not be suitable for the particular market being sought by a border station. Is that not so? Let us be blunt about it. Let us take one staion, CKLW. They cater to the American market or they would be out of existence. It may very well be that production of a commercial in the United States is suitable for the market across the river, and much more suitable than a production done in Canada. Under those conditions would J. Walter Thompson not advise that the American-produced commercial be used?

Mr. Miller: Which market would that commercial be trying to reach?

Senator Laird: Detroit.

Senator Davey: They could hardly be advertising that when they are soliciting business in New York state.

Senator Laird: Let us say it is a Canadian company and their client is Canadian.

Mr. Cronin: Who is trying to sell in Detroit? You would then do a commercial that would support that.

Senator Buckwold: Senator Laird has raised a very real problem in those border areas, where American companies are advertising on a Canadian TV channel, directing their advertising to an American audience. I would agree that this is a real problem.

Senator Davey: I don't agree with that. I have two more questions. On page 15 you say, in your conclusion:

> That the present film tariff policies and charging be reviewed, with the intent of making it contemporary with today's government, consumer and business needs.

Did you have in mind this Merrill Lynch thing, that we have heard so much talk about, in making that recommendation?

Mr. Cronin: I must say that I am very confused by the tariff, the amounts involved in importing commercials. I do believe that if commercials are imported for $68.40, perhaps that type of tariff was created for other circumstances. This is in terms of encouraging Canadian production. If there is a renovation of that tariff system that is not punitive, I think it would be workable.

Senator Davey: You say, on page 12, "What is Canadian culture?" You say, "Perhaps a clearer definition should be made." Then you say: "We have seen positive contributions and activity." Presumably you mean towards Canadian culture. Then you list five areas. The second one is advertising. I would be curious to know what you consider to be a positive contribution that advertising has made towards Canadian culture. I ask that question for information.

Mr. Cronin: Regarding the development of the music industry in this country, all our tastes run in different directions, I imagine. In the pop music field, for instance, advertising has contributed to the development of Canadian pop music by simply providing employment for very talented Canadian singers. I think musicians in Canada have benefited greatly through advertising.

Senator Davey: You did not mean the form of advertising?

Mr. Cronin: I believe that many of our younger writers and painters—not many, but significant painters, writers, and film directors, have come out of the advertising business, are in fact working at those arts while they are still in the advertising business. I think that in the film and the graphic arts, photography, some of the greatest photography in the world is being done for Canadian advertising by Canadian photographers. I find it difficult, coming from Ireland, to define culture, because I believe it is more than art, more than literature, more than telecommunications. It is also something to do with the way of life.

Senator Forsey: I have just one question or group of questions. It is concerned with page 5, which I referred to a few minutes ago. All the way through, it seems to me that you are saying that the imposition of regulations by the CRTC on Canadian content of programs produced excellent results. You say, for example:

> its resulting acceptance and success is of major significance. Many of the expressed concerns and criticisms towards these guidelines at that time have been reduced or eliminated.

Then you say:

> We feel that the business and social climate is, in many ways, more positive towards Canadian-content. This follows the CRTC guidelines.

Then you were kind enough to translate the word "guidelines" for me into regulations, and then, at the bottom, you say:

> more experienced and productive talent at the advertiser, agency, production and performing arts level, with the latter assisted greatly by the CRTC requirements.

I can summarize what you will say: "Ah, yes, but look at the middle there. It is that the deliberate and well-thought out preliminary investigation and planning by

Mr. Juneau and his associates were of major importance in the success of implementation of these guidelines."

Well, I would be inclined to agree with that, but there are two points I should like to ask you about, the first of which is whether you have any reason to suppose that Mr. Juneau and his associates, since he made that speech three years ago, have not been doing some well-thought out preliminary investigation and planning. And the second is: Do you not think that a modest contribution to this process of well-thought out preliminary investigation and planning is something that this committee is now trying to engage in?

Mr. Cronin: That is exactly what we believe, senator. What we are saying there, and I think it is quite obvious, is that the climate for change for accelerated Canadian content in television commercial production is very good. What we are, I suppose, implying more than saying is, that we believe that any emotional reaction to this situation in terms of, for instance, an outright ban declared overnight, as we heard about earlier, is ill-considered and, in our opinion, irresponsible. There are certain very serious economic probabilities that should be considered.

With respect to the program regulations it was a scaled move; there was time given. Canadian broadcasters were not forced overnight into change. That is simply all we are saying. We are just cautioning against emotionalism.

Senator Forsey: But you are not, therefore, necessarily cautioning against a graduated set of regulations, the kind of thing that you just described the CRTC doing in the other case? You are objecting to a sudden 100 per cent ban?

Mr. Cronin: I would prefer to see it happen without regulations.

Senator Forsey: Yes, that we understand; but, as Senator Davey has already pointed out, in that case it is a matter of, "To-morrow, and to-morrow, and to-morrow, creeps in this petty pace from day to day to the last syllable of recorded time." You could watch the snails whizz by!

Senator Buckwold: There is a good line for one of your ads!

Senator Forsey: Or to use another phrase of my old Newfoundland grandmother, you are going as slowly as if you were driving a snail ahead of you. This is what worries me. You say, "Isn't it splendid, in effect, that the CRTC was tough on this other thing after thinking the thing out—which they probably have been doing now, I suspect, for the last three years. After thinking it out and working it out very carefully, then they started in with some graduated regulations, and look at all of the wonderful results." And now you say to us, in effect, "Oh, act very carefully! Be frightfully careful! We would much prefer to see it left to the industry itself and you had better watch, look and listen. You had better be very, very, very, very careful about doing anything in the way of compulsion," in spite of the fact that on your own showing, CRTC compulsion did give the industry something of a kick in the seat of the trousers, which it apparently needed.

Mr. Cronin: I believe, though, senator, there are different implications involved. First of all, the Canadian private broadcasters, when they were given those licences to operate, were given a considerable opportunity, let's put it, in terms of—at the time, I remember, it was referred to as a licence to print money. I think that with that came a *quid pro quo* in terms of an obligation.

Senator Forsey: You have a good point there.

Mr. Cronin: I think you will establish the money involved as being somewhere in the range of the two submissions you heard today. I believe there is a possibility that the good purpose that the motion has in mind, related to the question of the broadcast film industry, may not be achieved by regulations similar to the CRTC regulations. I think that the climate is correct, but I do believe there is a possibility that money will be diverted into magazine advertising or print advertising, or out of it. It might do just the opposite of what you intend.

Senator Forsey: I appreciate that point, but I just want to make clear the kind of contradiction there seems to me to be in your approach to certain things. The point you just made is a perfectly valid one, and I think we all recognize that we do not want to plunge into this thing without knowing what we are doing.

Senator Buckwold: May I ask one last question? This is not even facetious. What was the attitude of J. Walter Thompson Agency with respect to the CRTC regulations as to Canadian content some years ago when they were imposed? Were you as enthusiastic then as you are now?

Mr. Cronin: I was not working for J. Walter Thompson at that time. I was working for another advertising agency and I helped to write certain briefs which, in that particular case, were in favour of the move to more Canadian content.

Senator Buckwold: As I recall, there was a good segment of the advertising industry which was very concerned as to the impact of these regulations. I am just wondering what your company's attitude was at the time.

Mr. Robertson: I cannot give you an answer on our attitude at that time, senator. I was not in that kind of position.

Senator McElman: Mr. Chairman, Mr. Cronin has warned against emotionalism. I would just comment that at the earlier stage when Mr. Juneau gave notice of what would be required, all of the emotionalism came from the industry. I should hope that that will not be repeated this time.

Mr. Cronin: I think, senator, it will come from both sides.

The Deputy Chairman: Senator Graham has a question, and then Senator Prowse.

Senator Graham: One final question, Mr. Chairman.

In your conclusion you say: "We believe that the desire to accelerate Canadian-content commercial production is a positive and attainable goal." Yet you are adopting, I believe, a go slow attitude. I am wondering just how slow is slow, and do you envisage the day when you could support 100 per cent Canadian production?

Mr. Robertson: I do not believe, in terms of getting the necessary information on which to make the judgment that the committee has been charged with, that it is a 5- or 10-year program in terms of arriving at what is best. I found it incredible how much we learned about the subject in four days of concentrated effort. It looks like—and it is not—a delaying tactic to postpone legislation. In arriving at our conclusions we tried to be as responsible as possible, and not coming out and calling for a 100 per cent ban, because we do believe that there are a number of questions which must be answered. We do not know how much media or how much money will be transferred from media to commercial production; we do not know some of these things.

We think if one is to take a responsible attitude, one has to raise such questions as: Do we really know how many more jobs are going to be created? How much money are we talking about? What is Canadian culture? What is this; what is that? I do not think that is irresponsible; I do not think it is delaying the subject at all. The way in which we approach our problems, in terms of the advertisers with whom we deal, is by asking them an awful lot of questions, and we also come up with an awful lot of solutions once we get answers to those questions. We cannot speak for the advertising industry or for all of our clients. We have simply come before you to say that we are one advertising agency; we do not have the final say, but we think we do have a responsibility to share with you some of our own experience, which has been awfully good, but also some of our concerns. That, basically, is the reason we are here today. We wish we had more concrete answers; we wish the logic flowed in a grand fashion. What we wanted to do was to share with you where we had come to date as, hopefully, a responsible business entity.

Senator Buckwold: No one on the committee would even feel there was any sense of irresponsibility. I think it has been a very useful brief, and I would not want you to get that impression because you happen to be questioned.

Senator Laird: It is very useful.

Senator Buckwold: The fact is that you raise some very useful arguments that should be further investigated.

Senator Prowse: I am not quite so interested in the philosophy as I am in answers to some concrete questions. When you produce a production in Canada that costs you $20,000 for a client in the United States, what does it cost you in duty to get that into the States? Is it $324, as it would be to bring a $30,000 one back?

Mr. Cronin: The duty is, I think, approximately the same. As I have said, we have made commercials for them.

Senator Prowse: So leaving aside the point of view of the advertiser in the States, in other words the people who actually are producing commercials in Canada are not at a disadvantage, as against people who are producing commercials in the United States. In other words, they have the same access to the American market as the producers in the States have here. Am I correct in that?

Mr. Cronin: Yes.

Senator Prowse: They also have a 30 per cent edge in cost.

Mr. Cronin: That is right.

Senator Prowse: That is a pretty fair edge to go into a market with, if these people then get off their butts and go to work.

Mr. Cronin: We do make a reference in our brief to what we have estimated, from talking to certain production companies, of the volume of business being done in the United States. I should again not mislead you. That is a combination of programming and television production. There is a considerable amount of programming being done in Toronto for the United States market, and I believe some companies in Toronto are very aggressive in terms of selling to the United States market.

Senator Prowse: I can see the point; nobody wants to have somebody else tell them how to run their business. The fact that you say, "Go slow" on how to change the basis on which I am doing business is completely understandable, and I think everybody appreciates the position. We come back again to what Senator Davey said. I do not know whether you heard them—you probably did—but we certainly heard them. The broadcasters just cried bloody murder when it was being suggested that there should be this much Canadian content; they were all going to go broke. It was a really sad thing. Since then I think they have been crying all the way to the bank. Obviously they did not go broke. We suddenly found the talent was there and it was given a chance. What becomes important is the question of what comes first, the chicken or the egg. Does the market produce the talent, or the talent the market? In other words, if we can do something so that the market is available to you, will that bring out the talent? Or do we have to wait until the talent is there and then go and see the market?

Mr. Cronin: This whole question of talent is one of the reasons why we ask where it is going to lead. The exodus of talent from Canada in the performing arts has been considerable in the past 15 or 20 years. In the television business it has been spectacular. The end result is that directors, writers and performers in major United States shows such as "Laugh-In", the Smothers Brothers, Sonny and Cher, are all Canadian. Some of those people I know from first hand were very active in commercial advertising in Canada, and some of them were among the most sought after talent. Quite obviously they could not earn enough money in that particular end of the business to sustain them in total, so they still ended up in Los Angeles. The subject of programming and the subject of commercial production are related, but I would suggest it is in a 90-10 or 95-5 relationship.

Senator Prowse: This sheet has been handed out to us on your behalf. How does the advertising agency operate with a client? Does he come to you and say, "I have this product. I want to go. I would like to sell so much. I have so much money to spend"? Is it a combination of these things? Does he tell you he wants it in newspapers, or do you tell him where he puts it?

Mr. Robertson: I would like Mr. Miller to answer that.

Mr. Miller: A client comes to us with a product or a service to sell and employs us as counsellors in the best means of communicating their goods or services to the Canadian public. It is our initiative that directs them to the media, to the creative approach that we use. In practically everything, as has been indicated here today, the client ultimately has the final say. Despite all our good professional recommendations they can say, "We don't agree you should be in newspapers. We have a very good television commercial that we want to use," and that will be it. As has been said, if we say, "Well, that's it," and we throw down our pencils, we will not be their advertising agency. Our responsibility is to present them with our professional recommendations on the best means of selling the goods or services.

Senator Prowse: The desirable thing, as with any professional man, is that your client takes your advice.

Mr. Miller: If he respects us, as presumably he does or he would not have retained us, yes, he will take our advice, if we can support our point of view.

Senator Prowse: When you set up this sheet, were these figures related to something? Did you take an actual client's account?

Mr. Miller: It is purely hypothetical.

Senator Prowse: If it is purely hypothetical, how did you come to say, "If there is increased budget to accommodate increased cost"? Your advice to him will be this. "You buy so much television, because this should get you such a percentage of sales." Is that not about it?

Mr. Miller: Yes, sir, that is correct.

Senator Prowse: You allocate it in that way. The only way you would eliminate another medium would be if it was not effective or efficient, in which case it would probably be eliminated anyway.

Mr. Miller: In an ideal situation that is true, but let me draw your attention to item 3. This is a situation where this particular brand or service has, prior to the implication of some legislation, $800,000 spent in television time. Suddenly its production budget is increased to $200,000. For whatever good competitive reason, he still believes that he has to stay in television. At the same time, he also believes that it is essential to find this $100,000 spent in print. We are saying that if you can afford in this instance to reduce your television budget by $100,000, that is where the money is going to have to come from. We could turn that around and say this a little bit artificial. What is more logically the case is, if $800,000 is the amount of money you need to spend in television to perform the job you are doing, match competition or sell your product, you have $100,000 in print and suddenly your production cost doubles, if I were the man responsible for that client I would recommend that he deletes print, because if you are going to do something well, let us do it well in one medium, as distinct from trying to do half a job.

Senator Prowse: Surely, your sales are the result of the total of all your effect on the market of all the media.

Mr. Miller: Correct.

Senator Prowse: So if you reduce any amount of your effort you will cut down your sales.

Mr. Miller: That is correct. You are not doing as well as you could.

Senator Prowse: If you are going to cut down your sales you lose money.

Mr. Miller: Yes, sir.

Senator Prowse: Suppose on television I had, let us say, two exposures a week last year and it cost me $500 per exposure, and then the television station raises the cost. I have been through this in an election campaign, so I know; they doubled their costs on us between one election and another, which did not mean I was going to take the time, but merely that I had to hustle around and find some more money.

Mr. Miller: Correct.

Senator Prowse: If I am going to sell the stuff and advertising sells it with a better advertising campaign, the only reason you are going to have Canadian stuff is because it will hit better at Canadians than the American stuff does.

Mr. Miller: That is correct.

Senator Prowse: This ought to be the only reason, and we ought to keep it in mind. If we give the thing a push to get it going here, then you will sell more product, it is a more efficient operation and he makes money by spending it on advertising. That is what you tell him now, do you not?

Mr. Miller: That is true. In this particular instance the client would then say, "All right, if you believe that we simply have to accommodate that extra $100,000 and still spend that $800,000 in the media, where are we going to get that other $100,000?"

Senator Prowse: The whole proposition of this is that if this meets the Canadian life style by having an ad that is tailored to the Canadian life style rather than one that is tailored to American and Mexican life styles, in view of what we were talking about earlier this afternoon, then he will get more value for his money.

Mr. Miller: Yes.

Senator Prowse: Perhaps he is going to get more value for his money. In other words, I figured this, that in Canadian advertising, to spend $324, for example, for something that does not touch my market at all, your $10.90 goes out the window when you are dealing with that, if you can bring it in for $64, or whatever it is.

Mr. Miller: You are trying to quantify the sales difference which you can effect in running a United States mass produced commercial, and running an even more effective Canadian produced commercial, and what that does to the market.

Mr. Robertson: There are instances where advertising we bring across the border is consistent with our lifestyle.

Mr. Miller: That is true, but the senator is talking about Canadian advertising that is measurably different from that in the United States, and is asking "Is that not going to result in extra sales, that are considerably higher here on that account?"

The Deputy Chairman: Which we hope we are doing now.

Mr. Miller: Exactly.

Senator Prowse: The reason I am saying that is that the American banks prefer to pay $30,000 for an American commercial rather than get what you considered was an equivalent commercial for $10,000 less. The hard-nosed guy like a banker is going to do a thing like that, and it is good business for him or he would not be doing it.

Mr. Robertson: Mr. Chairman, I am thinking in terms of the examples of the clients that we represent, that because of the steps which Mr. Miller took you through, we have arrived at a much higher proportion of what we hope is effective advertising that is produced in Canada to meet Canadian needs. The remaining 20 per cent of the media placement that we represent for our clients is made up of many examples—and my colleague can help me with this. In one example I can think of, we did work on preparing a Canadian pool, but the United States came up with a smashing television commercial. They tested it and the American commercial came out better than the Canadian commercial. It was just incredibly good advertising. Emotionally we thought that ours was better, but in terms of all the conditions that we took a look at, it was good advertising. So the client resisted our advertising on the air as opposed to this advertising from the United States, which was not foreign to our lifestyle. It was consistent with the marketing strategy, consistent with everything that he wanted to do in Canada. But over here he had this great commercial which costs $90,000 or $100,000 and it was right for the Canadian market. That is an example.

There are other examples, where advertising with one of our clients is thoroughly tested in the United States and it is incredibly hard for us to go to our client and for our client to make a decision, when he has access to these commercials that have been proven nine different ways. We cannot afford to do the research in Canada, to do all the concept advertising in Canada. So his view, hypothetically, has to be, "I want to resist Canadian produced advertising, as long as I have this well tested, well proven commercial available to me."

The Deputy Chairman: Gentlemen, that is all very interesting. We would like to continue, but the Senate will be sitting at 8 o'clock and our reporters have to be in the chamber at that time. I have some questions to ask, but as I have said before, the Chairman can be seen but not heard, and that is what I have been doing all afternoon. I have some questions to ask, but I will have to write to you. So, Mr. Robertson and gentlemen, again we want to thank you very much for your co-operation.

Mr. Robertson: Thank you.

Senator Laird: Mr. Chairman, I have a letter on this very point, and I would be very pleased if the committee would receive it. It is from CKLW, and I have two dozen copies with me. That will give everyone a chance to read it overnight.

The Deputy Chairman: Very well. We will take it as being tabled now and the clerk will distribute copies of it so that every member of the Committee will have a chance to read it.

The committee adjourned.

Published under authority of the Senate by the Queen's Printer for Canada

Available from Information Canada, Ottawa, Canada

CA1 YC 19
-T73



FIRST SESSION—TWENTY-NINTH PARLIAMENT
1973

THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING SENATE COMMITTEE ON

TRANSPORT AND COMMUNICATIONS

The Honourable Maurice Bourget, P.C., *Deputy Chairman*

Issue No. 4

WEDNESDAY, JULY 11, 1973

LIBRARY
SEP 27 1973
UNIVERSITY OF TORONTO

Second Proceedings on the examination of radio and television commercial advertising broadcast in Canada

---

(Witnesses and Appendix:—See Minutes of Proceedings)

25712—1

THE STANDING SENATE COMMITTEE ON TRANSPORT AND COMMUNICATIONS

The Honourable J. Campbell Haig, *Chairman*

The Honourable Maurice Bourget, P.C., *Deputy Chairman* and

The Honourable Senators,

Argue	Haig
Blois	Langlois
Bourget	Lawson
Buckwold	*Martin
Davey	McElman
Denis	Petten
*Flynn	Prowse
Forsey	Smith
Fournier (*Madawaska-Restigouche*)	Sparrow
Graham	van Roggen
	Welch

**Ex officio members*

20 Members

(Quorum 5)

Order of Reference

Extract from the Minutes of the Proceedings of the Senate, Thursday, May 24, 1973:

"The Honourable Senator Buckwold moved, seconded by the Honourable Senator Boucher:

That the Standing Senate Committee on Transport and Communications be authorized to examine and report upon the question of the advisability of steps being taken to ensure that all radio and television commercial advertising broadcast in Canada be completely produced in Canada, utilizing Canadian manpower to the maximum possible extent.

After debate, and—
The question being put on the motion, it was—
Resolved in the affirmative."

Robert Fortier,
Clerk of the Senate.

25712—1½

Minutes of Proceedings

July 11, 1973.

Pursuant to adjournment and notice, the Standing Senate Committee on Transport and Communications met this day at 9:30 a.m.

Present: The Honourable Senators Bourget (*Deputy Chairman*), Buckwold, Davey, Denis, Forsey, Fournier (*Madawaska-Restigouche*), Graham, Langlois, McElman, Petten, Prowse, Smith and Sparrow.—(13)

Present but not of the Committee: The Honourable Senators Laird, Lapointe, McGrand and Molgat.—(4)

The Committee resumed its examination of radio and television advertising broadcast in Canada.

The following witnesses, representing the Association of Canadian Television and Radio Artists (ACTRA), were heard by the Committee:

Mr. Donald Parrish, President;

Mr. Paul Siren, General Secretary.

In addition the following witnesses, representing L'Union des Artistes, were heard by the Committee:

Mr. Robert Rivard, President;

Mr. Jean-Paul Dugas, Member.

At 12:30 p.m. the Committee adjourned until 2:30 p.m.

At 2:35 p.m. the Committee resumed.

Present: The Honourable Senators Bourget (*Deputy Chairman*), Buckwold, Davey, Denis, Forsey, Fournier (*Madawaska-Restigouche*), Graham, McElman, Petten, Prowse, Smith and van Roggen.—(12).

Present but not of the Committee: The Honourable Senators Deschatelets, Laird, Lapointe and McGrand.—(4)

Mr. Peter Hunter, President of McConnell Advertising Company Limited, was heard by the Committee.

The Committee also heard the following witnesses representing the Association of Canadian Advertisers Inc.:

Mr. A. Z. Pengelly, Immediate Past President;

Mr. W. T. Blakely, President;

Mr. Henry Ross, Co-Chairman, Joint Broadcast Committee;

Mr. David Hopkins, Co-Chairman, Joint Broadcast Committee;

Mr. J. V. Dampsy, Vice-Chairman and Treasurer.

On Motion by the Chairman, it was Resolved to print in this day's proceedings a letter received from Mr. Murray Chercover, President and Managing Director of CTV Television Network Ltd. It appears as an appendix.

At 5:40 p.m. the Committee adjourned to the call of the Chairman.

ATTEST:

Denis Bouffard,
Clerk of the Committee.

The Standing Senate Committee on Transport and Communications

Evidence

Ottawa, Wednesday, July 11, 1973.

The Standing Senate Committee on Transport and Communications met this day at 9.30 a.m. to consider the question of the advisability of steps being taken to ensure that all radio and television commercial advertising broadcast in Canada be completely produced in Canada, utilizing Canadian manpower to the maximum possible extent.

Senator Maurice Bourget (*Deputy Chairman*) in the Chair.

[*Text*]

The Deputy Chairman: Honourable senators, just to give you an idea of the agenda for today, we will start this morning with ACTRA, and then at 10.30, or a little later, we will have L'Union des Artistes de Montréal. At 2.30 we will have McConnell Advertising Limited, and at four o'clock, or a little thereafter, we will have the Association of Canadian Advertisers Inc.

Now, honourable senators, with respect to the letter from CTV, it is agreed that that letter be tabled as evidence.

Hon. Senators: Agreed.

(*For text of letter see appendix*).

The Deputy Chairman: Are there any other questions regarding organization or sittings?

Senator Laird: Mr. Chairman, did the committee agree to accept the filing of this CKLW letter written to me?

The Deputy Chairman: We agreed last night before we adjourned.

Senator Davey: I think there should be some discussion about it at some point, but perhaps not now.

The Deputy Chairman: Later on we may discuss it and Senator Laird may say something about it.

Now, our first witnesses today are Mr. Donald R. Parrish, the President of ACTRA, and Mr. Paul Siren, the General Secretary of ACTRA.

Mr. Parrish has told me that they have no brief but that he would like to make some kind of introduction, after which Mr. Siren will make some comments as well.

I want to welcome you, gentlemen, and thank you very much for having accepted our invitation to appear before the committee.

Mr. Donald R. Parrish, President, ACTRA: Thank you, Mr. Chairman.

As president of ACTRA I number myself among those who consider themselves performers, and a performer is a communicator and without an audience there is no communication, so we are very grateful to you for providing the audience this morning. It just remains to be seen how good we are at communicating.

As a matter of introduction I should like to suggest that we, as an association, believe in the philosophy of commercials. It is a way of life with us and I think there is no harm at all, as a matter of fact it is a good thing, to have commercials to introduce goods and products to those of us who are in the audience and potential buyers. The commercial is a means of communication and we, as the performers and writers of our association, are also communicators and are concerned with what is communicated or we do not communicate. We believe that the survival of Canada as a distinct nation is linked directly to communications and that we must speak, one to the other, inside this country, from one geographical location to another, from one religion to another, from one race to another. We must speak our own accents. At every opportunity we must always strive to protect all the subtleties that are uniquely Canadian.

Commercials are designed to sell goods, and they indeed do that. The result in the market place will attest to the success of commercials and how powerful they actually are, but apart from the prime concern of a commercial—that is, the selling of goods or services—they also carry, in an indirect way, other messages, and these messages are things of the order of language construction and accents and bits of folklore. If these components are foreign—these may be small points but they do, in the overall picture, contribute to the great flood of foreign material which confronts all of us on a daily basis. We believe very strongly, as an association, along with a host of other Canadians, that we should insist on the maintenance, where commercials are concerned, of high standards of information on the value and the quality of products being sold and available to Canadians. We also believe we must maintain ethical standards in order that misleading claims are not made—and I might say here that the more remote the production of a commercial becomes, the harder it is to control the content of the commercial.

We believe that foreign produced commercials should not be used to sell products to Canadians except in instances where Canadian producers, using Canadian talent, for reasons of climate or locale, move outside the country to produce that commercial. We also believe that commercials should employ Canadian talent only, except in

instances where the person involved is of international reputation.

We all realize that it has never been easy for a performer in Canada to make a comfortable living, and so it has been ACTRA's long-term policy to try in every way to improve this condition; and so the constant look at sources of employment or things that might mean employment for us.

The commercial field is one of those sources, and we feel strongly that all of the talent money spent on commercials to sell goods to Canadians should be spent on Canadians. There has been a slow improvement in this direction over the past years, and we are very grateful for that, but there is still a very large percentage of commercials that are produced entirely outside this country and, as a result, the income from those to talent is lost entirely to Canadian performers.

Audiences have been conditioned to expect a high standard of performance from all of us, and I am sure that you are aware that it is not possible to have a high standard of performance unless the artist is able to devote his whole time to his craft. If he cannot find sufficient employment in order to do that, then the talent pool becomes smaller and the quality becomes weaker. We must therefore take advantage of every possible opportunity or run the risk of coming to the point where we do not have a good, strong, successful community.

I believe that to remain distinctly Canadian—and this is my final point, by way of introduction, after which I will defer to Mr. Siren, who has a great deal more detailed information on the things that I am speaking in a philosophical way about—we must have a very large, healthy group of communicators. Those, at least in our instance, are the singers, the dancers, the actors and the writers, and we must be able to tell our Canadian story in accents that are equal to or, hopefully, greater than the flood of information that comes over us every day from our radios and TV.

I thank you, gentlemen, for this opportunity, and I now defer to Mr. Siren, who will give you more detailed information on the point.

The Deputy Chairman: Thank you very much, Mr. Parrish. Mr. Siren?

Mr. Paul Siren, General Secretary, ACTRA: Thank you, Mr. Chairman and honourable senators.

We—that is, those of us in ACTRA—consider that the commercial industry in this country, as in many other countries, is in fact a very substantial industry, involving and employing many people, and that the production of television and radio commercials is not only a part of a very substantial industry in itself but is also related to the development of our cultural image and to the development of a professional talent pool of skilled and tested performing talent, and is therefore of great importance in examining our entire posture as Canadians and in examining the methods we need to adopt to improve and enhance and strengthen our cultural development.

ACTRA, as the association representing the professional, performing and writing talent in the recorded media—namely, in broadcasting film and other recordings —has considered this problem for some time and, while as a national association we are a mere ten years old, our first representation in this regard occurred in September, 1968, at the Moncton hearings of the Canadian Radio and Television Commission, at which time ACTRA presented a brief concerning the problem of imported commercials. Our concern at that time was that Canada is the recipient of what we called "dumped" television and radio commercials, and our concern was expressed along the lines that in addition to the availability of American television and radio programs, along with their commercials, to the majority of the Canadian viewing and listening audience a very substantial portion of national commercials and, in many cases, local commercials on Canadian radio and television, were made outside the borders of this country.

In addition to that, many Canadians produced commercials engaged foreign talent. One of the reasons given for the engagement of foreign talent in Canadian produced television commercials particularly, and in some cases radio commercials, was that the advertiser and the sponsor sought an identity of the TV commercial product with persons who appear on television and radio constantly and regularly, and who have an appeal to the consumer audience as performing talent.

It was suggested in some specific instances that, because of lack of performing personalities in Canada, it was necessary for the advertiser to seek foreign performing talent to act as the spokesman, to act as the salesman for the goods and services that the advertiser wanted to promote.

It is our view, and perhaps no other view could be expressed from our association, that Canadian performing talent is equal to any in the world, given the opportunity to work. I think the proof of this is the fact that so many Canadians are working outside the borders of this country and have in fact acquired an international reputation on the stage, in films, in television and other media.

We also feel that we are capable of producing all of the commercials that are required by Canadian industry in this country, providing all these skills and the talent that is necessary for the production of such commercials. We believe, and in truth the advertising industry has accepted the concept, that in view of the limited availability of engagements in Canada for professional talent, the commercial production provides more opportunities for professional talent to be engaged, and we therefore consider the work pool provided by the production of television and radio commercials as an extension of work opportunity in Canada for the talent that we possess.

In addition to representations in written form to the Canadian Radio and Television Commission, ACTRA produced an audio-visual presentation which was presented to a meeting called jointly by ICA—that is, the Institute of Canadian Advertising—the Association of Canadian Advertisers, and ACTRA in Toronto. At this meeting several hundred key people in the industry were able to view this audio-visual presentation produced by ACTRA, and the same presentation was presented to the April, 1970 hearings of the CRTC at which the question

of Canadian content in broadcasting was rather heatedly debated.

Our concerns at the present are that while there is an indication that more of the national television commercials are being produced in Canada than in previous years, according to the information provided by the Institute of Canadian Advertising and the Association of Canadian Advertisers recently in a survey taken of, I believe, 25 major advertising agencies in this country, it appears that at the moment 32.2 per cent of national television commercials are being imported—and that figure, apparently, shows some improvement over previous years, and over a period of five years it indicates an improvement of some 7 per cent.

From ACTRA's standpoint, we are not familiar with the criteria used to arrive at these figures. However we are not in a position to challenge them, nor do we wish to do so. The fact remains that almost one-third of the national television commercials that appear on television screens in Canada are produced outside this country. We believe that to be inordinately excessive.

In addition to that, when one considers that most local commercials are produced outside this country, when one considers the amount of commercial production outside of Canada's borders for radio, and when one considers that almost all, if not indeed all, of the radio station I.D.s in English-speaking Canada are produced in the United States—and by that I mean the jingle that most radio stations use to announce their call letters—this means that in each of these cases foreign talent has been used for the production.

We consider the need for the increased use of indigenous talent and indigenous skills in all areas of production to be of urgent concern. Our reason for considering this to be so is that we believe that the commercials produced outside our borders are conceived, designed and produced under different laws, for a different consumer audience living in another culture and are, in fact, importing into this country many of the things that we are greatly concerned about in the development of our own culture. Furthermore, we feel that this very substantial importation of television and radio commercials is expressing an economic thrust on the part of the country in which they are produced, and is not necessarily in the best interests of our own needs and aspirations.

Foreign produced commercials have a very clear and, perhaps, an undue influence or impact on our culture. Not only do they deny the opportunity of participation to Canadian talent by not allowing it to be seen and heard by the Canadian viewing and listening audience, but they in fact enhance the position of foreign talent in this country in opposition to the needs and requirements of the development of a Canadian cultural talent pool.

ACTRA has negotiated with the industry over some years. We have an agreement, and we have a very amicable relationship in our collective bargaining posture with the industry—a very healthy relationship. We have found, however, that it is not possible for ACTRA to bargain with the industry in trying to limit the importation of foreign commercials for television and radio use in Canada. The best we have been able to do is to establish a joint committee which, to put it briefly, has the function of attempting to educate the industry in the promotion of Canadian production. While this in itself is healthy, it has not proved to be a very successful endeavour, because the figures indicate that the pace of growth is insufficient.

The lesson is that in the past five years or more, despite ACTRA's pressure, despite the pressure of a changing political and cultural climate, the increase in the proportion of production of national television commercials in Canada is very modest indeed.

Senator Laird: You said 7 per cent.

Mr. Siren: Over a five-year period. That is what the figures indicate.

Senator Prowse: Yes, you said 7 per cent in five years.

Senator Forsey: It is not exceeding the speed limit.

Mr. Siren: From our point of view that 7 per cent is modest.

It is our view that in order to be able to move forward in this area it is necessary to enact legislation. The type of legislation we would like to see is, as Mr. Parrish indicated, that all television and radio commercials, and, I suggest, radio station I.D.s as well, be produced in Canada, with the exception of cases where for reasons of climate or locale it is necessary to move out of Canada. That is a very valid problem on occasion. Another exception would be in a situation where an advertiser wishes to engage the services of a person of international reputation, because there are certain instances, obviously, where such persons are not available in the Canadian talent pool. We believe that that type of legislation can be enacted, that the industry is capable of living up to it.

We understand, as we witnessed in the case of the hearings of the Canadian Radio and Television Commission, that whenever it is suggested that regulations be adopted to force an industry to adopt a certain posture, that there would be resistance. It may even be suggested that there is not sufficient talent in this country—which from our point of view is not the case. It may be suggested that there will be a reduction in the amount of commercial production. However, it is our view that industry will insist on promoting its goods and services. They will do it in relation to the economic patterns prevailing at any given time. But at least, if we have the regulations which require the industry to produce their commercial production in Canada, then we will have that share, whatever it may be, from time to time.

It is therefore our recommendation, with great respect, that this committee should undertake to recommend the enactment of legislation to require the advertising industry to produce their national television and radio commercials in Canada and thereby enhance and make a greater contribution toward the opportunities for work by Canadian talent, increase the income of Canadian talent, which is now being drained or denied by the importation of commercials, from the United States primarily. In our

case a third increase would mean a little better than $1 million in the pockets of Canadian performing talent.

I should add at this stage, in order to clarify any misconception that may prevail, that ACTRA is not a closed situation in which we insist that only members of the association may be employed. We have always adopted the position that as an association representing professional talent we must not be in the position and we must not undertake strictures that would deny an opportunity for new talent to come forward. Therefore our arrangements with our engagers provide for work permittees, who may not be members of ACTRA, to be engaged by the engager of talent. The work permittees are allowed to work with our membership on the work permit basis.

We respectfully suggest, Mr. Chairman, that this committee undertake to make these recommendations along the lines we have suggested. We thank you for the opportunity to appear before you this morning. Mr. Parrish and I will attempt to answer any questions the members of the committee may have.

The Deputy Chairman: Thank you very much, Mr. Siren. We are open for questions now and would like to start this morning with Senator Fournier.

Senator Fournier (Madawaska-Restigouche): It was mentioned that in order for an actor to survive he must be provided with a comfortable living. Would you enlarge on that please? What is comfortable living?

Senator Prowse: A little better than they have now.

Mr. Parrish: I made the statement, so perhaps I should enlarge on it. In total, ACTRA has approximately 4,000 members, whose average income is approximately $1,000 per year. There is, of course, a pool of performers within that 4,000 who do make comfortable livings. However, we as an association are concerned that so many of us who are performers of good calibre simply do not have an opportunity to make a better living.

Senator Forsey: How can they perform at all, except as Hamlet's father's ghost, if they only receive $1,000 per year?

Mr. Parrish: I must agree with you. Some, indeed, do look just like that.

Senator Graham: How many of the 4,000 would be full-time employees?

Mr. Parrish: I expect probably approximately 500 are full-time and make their living solely as performers.

Senator Graham: Could you tell us the average income of the 500?

Mr. Siren: We have no specific figures in that regard.

Senator Fournier (Madawaska-Restigouche): Would you call the living of the 500 comfortable?

Mr. Parrish: Of the 500, I expect a comfortable living is made by 200. The remainder make something sustaining, but not comfortable.

Senator Graham: Could you tell us the average income of the 200?

Mr. Parrish: No, I could not tell you that, but it is comfortable.

Senator Prowse: Could you tell us the top limit?

Mr. Parrish: My guess is that it is probably in the area of $75,000 a year.

Senator Laird: That is better than a senator receives.

Mr. Parrish: Yes.

Senator Prowse: Maybe it requires more talent.

Mr. Parrish: We suggest that only five in that category receive that much. Certainly a greater number of senators realize incomes at least in that order.

Senator Buckwold: Also having difficulty communicating.

Mr. Siren: In order that there will be no misunderstanding, I must say that all members of ACTRA are freelance performers and not employees in the normal sense of the word. To supplement their earnings those who are only part-time performers obviously sell shoes or do something else.

Senator Graham: What are the qualifications to become a member of ACTRA?

Mr. Siren: We adopt the general view that the engager determines whether the individual has the talent to become a professional performer. If the engager decides to engage someone and pay him for performing we consider that the engager has determined the artistic competence. I might say that engagers insist upon the right of determining the artistic competence of the performing talent. Our constitution provides that in the case of a performer such performer must have had not less than four professional engagements before applying for membership in the association. In the case of a writer he must have had not less than two professional writing engagements before qualifying for acceptance as a member. We do accept as members those who are recognizably professional already. This applies to those who have been in the broadcasting industry for several years and for one reason or another may not have desired to join or may not have needed to do so because they were engaged as employees. They may then broaden out into freelance activities.

Senator Sparrow: When you refer to work permits, do you mean Canadians receiving work permits from your association, or actors from outside the country?

Mr. Siren: I referred to Canadians who may not be members of the association. They may be engaged to perform, in which case we provide a work permit.

Senator Sparrow: Why would they not become members, rather than use work permits?

Mr. Parrish: They do not have the four engagements to qualify as members.

Senator Sparrow: Do they need to have had engagements in order to qualify for a work permit?

Mr. Parrish: Yes; a work permit is issued only when there is an engagement.

Senator Sparrow: The first engagement?

Mr. Parrish: Yes.

The Deputy Chairman: Do you include French-speaking performers in the 4,000-membership to which you referred? L'Union des Artistes is completely separate from ACTRA, but you have the same purpose.

Mr. Siren: We have a very close relationship and the objectives are, I believe, identical. It is just a matter of separation by language providing for independent organizations.

Senator Graham: Is the membership fee the same for those who make, for instance, $75,000 and for those who make $1,000?

Mr. Siren: No, there is a distinction in the sense that our due structure is based on a percentage of the income in our jurisdiction, with a minimum and a maximum, the maximum being $250 per annum.

Senator Graham: What is the minimum?

Mr. Siren: $50.

The Deputy Chairman: Is there any connection between your organization, or L'Union des Artistes and any other organization in the United States, either union or other groups?

Mr. Siren: We are both members of the Canadian Labour Congress, which has established a council of Canadian performing arts unions. Our organizations are members of that council and meet regularly to discuss matters of legislation and other points of mutual concern. In addition, both L'Union des Artistes and ACTRA are affiliated to the International Federation of Actors, which represents all of the performing talent unions around the world, both in the West and in the East, if I can put it that way.

The Deputy Chairman: But you are free to do whatever you like.

Mr. Parrish: May I add to what Mr. Siren has said? As far as ACTRA is concerned, back in our history we were affiliated with an American national union. We are no longer affiliated. We are wholly a Canadian union and only have adherences to international bodies, such as those Mr. Siren has mentioned. We run our own show. Our dues stay in Canada. It is entirely our own show.

Senator Denis: Suppose an actor who is not a member of your union, a new talent, wants to be hired by a customer who is buying advertising, can he perform as if he were a member of your union, or would you prevent his performing?

Mr. Parrish: I expect that our position is—I know our position is—that we prevent people working with our members unless they are qualified, and we have the means of qualifying by issuing a permit to work within our jurisdiction. If it happens to be a production that employs only one person, then it becomes difficult to exercise this because he is not, in fact, working with one of our members. In the instance where we have an agreement between the employer and ourselves, we expect that employer to adhere to the rules of the agreements that we have with them.

Senator Denis: Let us suppose that I am a buyer of a commercial and I want a group of actors who are not members of your union to be in that commercial and perform, would I be allowed to employ that new talent, or do they have to be members of your union? Otherwise, how could new talent be produced in Canada, if we follow your argument?

Mr. Siren: Our agreements with all of our engagers provide the following basic requirements—The first is that preference of engagement be given to ACTRA members. By that we mean that the engager should first of all examine whether within the membership of ACTRA the necessary talent is available. If that is not the case, and if, in the opinion of the engager, some other talent is required who is not a member of ACTRA, they send that talent to ACTRA and get a work permit from ACTRA to work. In most cases we do not have any disputes. We have taken the position that while there must be a preference of engagement, by that we mean that ACTRA members should be considered, and auditioned if necessary, for the role or character or engagement. If, in the opinion of the engager, it is necessary to hire non-ACTRA talent, that is available through the work permit procedure; and therefore there is the opportunity, sir, for new talent to emerge.

Senator Denis: In other words, in order to be hired, you must be a member of your union.

Mr. Parrish: No, you do not have to be a member.

Senator Denis: But you refuse that performer permission to perform.

The Deputy Chairman: They do not refuse. He can get a permit that will entitle him to do the work.

Senator Denis: But if you do not give him a permit?

Mr. Siren: There are very few instances of denial. Some clear denials are provided in our agreements. We have agreed with the industry that employees of an advertising agency that is producing a commercial will not be issued a work permit. That is not a matter of ACTRA's own narrow viewpoint; it is agreed by the industry that that should not happen, for very obvious reasons. In some cases, members of families of such employees are also denied a work permit for an engage-

ment produced by that agency only, but not in relation to general activity.

We have, I suppose, over many years once or twice suggested to an engager that they have not really made an effort to engage professional talent within our ranks, that there has been, perhaps, some preconceived idea as to whom they want to engage before going through the procedures. But in general, in so far as work permits for Canadians are concerned, there has been very little difficulty all the way throughout, and I think that would be attested to by the industry representatives.

Where we do have some serious debate, and where we do have some serious problems—on occasions ACTRA has taken the position of refusing to issue a work permit—is when in our opinion an engager has engaged foreign talent in positions which clearly, in our opinion, could be filled by Canadian talent. Let me give you an illustration. For instance, in our view—at that time we did not refuse, but perhaps we should have—it was not necessary, in our view to have an on-camera personality, who is an American, selling winter snow tires. We felt that there are, in fact, very many Canadian performers who are capable of selling snow tires.

Senator Laird: Would it not be his quality of performance that would be the real test?

Mr. Siren: Our submission is that there are many Canadian performers who have and possess the quality of performance.

Senator McElman: Do you have a fee structure for work permits?

Mr. Siren: Yes, we do.

Senator McElman: What is it?

Mr. Siren: It ranges from a maximum of $50 for the first engagement, to varying degrees, depending on programs. In commercial production, the first work permit is $50, the second, third and fourth are $25. In programs, we negotiate these work permits with engagers such as the CBC and CTV, and they vary depending on whether it is a local production, which may be $10, to a national production, where you have a principal performer, which may be as high as $30.

Senator McElman: It is sufficiently high to encourage membership.

Mr. Siren: That's right.

Senator Buckwold: I would like to ask a series of questions. First, perhaps we can discuss ACTRA very briefly, to get the set-up. You involve yourself basically with performers?

Mr. Siren: Performers and writers.

Senator Buckwold: And writers. I want to get this on the record. In addition, I would presume there are many other technicians who are connected with other unions that are involved in the production of commercials.

Mr. Siren: Indeed, that is so.

Senator Buckwold: I presume musicians are part of yours, or are they?

Mr. Parrish: They are quite separate.

Mr. Siren: They have their own organization.

Mr. Parrish: If I may just outline it. Our membership consists of the traditional performing artists, such as singers, dancers, actors and actresses, announcers, and all the allied fields of announcing, and, more recently, writing in the medium.

Senator Buckwold: I am trying to relate this to the fact that there are many, many more people involved in the production of commercials other than those represented by ACTRA. I relate this, then, to your figure of $1 million extra coming into your membership were all commercials produced in Canada. I think you used that figure.

Mr. Siren: That is right.

Senator Buckwold: We had a figure given to us yesterday which would involve a total cost of anywhere from $6 million to $8 million, depending on who you look at. I presume, then, that the other many millions would go to the others, mostly labour, who would be involved in the production of these commercials?

Mr. Siren: That would be so. It would bring in the cameramen, stagehands, lighting and sound people, clerical help, and so forth. In addition to that, of course, there is the whole question of studio costs and the use of facilities.

Senator Buckwold: We had a presentation yesterday from one of the large advertising agencies, J. Walter Thompson, and in their brief they referred to the fact that the J. Walter Thompson Agency is a signatory to the current ACTRA agreement, and they quoted therefrom as follows:

> The parties to this agreement agree that every effort will be made to encourage advertisers to produce television and radio commercials in Canada.

And their brief went on to say:

> By definition, therefore, as a signatory of this agreement, we are already endorsing the intent of this Committee's motion. Certainly our own overall production trends reflect our endorsement of this commitment.

Has the fact that all of the advertising agencies have signed that particular section in the agreement, in your opinion, been an effective tool in bringing about more Canadian production, or is it just some motion that some one goes through?

Mr. Siren: Our opinion is that we think it reflects an intent on the part of the agencies that are signatories to our agreement. I do not think, nor do I impute, that there are people in the agencies who would suggest that there should not be an increase in Canadian production of commercials. I think our problem is this: Many of the advertisers—in fact, the majority of the major adver-

tisers of Canadian television produced national commercials, or who are involved in national commercials—would be, what I call, continental advertisers. They are mainly American multi-national firms. In producing a commercial in the United States, used in the United States and, presumably, paid for in terms of their costing in that immense market in the United States, they take the position that it is simply less expensive, because of our tariff regulations, to import that commercial and use it on Canadian television. It saves them the cost of producing another commercial in Canada. I might add, this is to the disadvantage of the purely Canadian company that is forced to produce a Canadian-made commercial to compete with their American competitor in those areas where the products are in competition.

The agencies, despite their best intentions, I suggest, are not in a position to tell the continental advertiser, "You are not going to use that commercial in this country." I suggest that the agency must take the view of its client seriously, and if the client's direction is to use an American-produced commercial in this country, the agency will buy time for it.

The other element that I consider to be of some importance—and this, again, is beyond these best intentions, in my view—is that in many instances the commercials, at least in concept and in purpose, must conform to the decisions already made by the parent company outside this company. Therefore, it is easier to use commercials which have already been designed for that product in another country. While I do not question the integrity of the people who have adhered to our industry agreement, I suggest that it is beyond their powers to be able to enforce that intention on a client which is determined, for its own reasons, whatever they may be, to do otherwise.

Senator Buckwold: Are you concerned with the warning that we as a committee have received in some of the briefs presented, which is that as a result of the higher cost to some advertisers of producing commercials in Canada, when they already have an American-made commercial, there could be a change in media? This point has been fairly strongly made in at least two of the briefs I have read.

Is it of concern to you that when the advertiser starts looking at the cost involved, he will simply say, "Well, I have now reached the stage where it would be better for me to use a different media," and, in fact, there would be a loss in advertising revenue to television stations and, presumably, to actors and actresses who otherwise might have shared in the cost of producing that commercial? Do you feel that that is a realistic position to take?

Mr. Parrish: In answer to one of those points, senator, I believe that at the moment ACTRA, from its position, is not getting any share at all.

Senator Buckwold: So you have nothing to lose.

Mr. Parrish: If it became a question of there being less time on the radio and television media, then even that percentage would be an advantage to us. I understand that the point you are making is that they might well move some of the money now being spent in television and radio advertising to print advertising, or something of that order.

Senator Buckwold: That, really, is the impact of my question. Perhaps I made it a little too broad. Do you, in fact, think that it is a realistic concern that the advertising dollar will move into other media?

Mr. Siren: My own view, senator, is that while it may be valid in weighing a particular advertising commercial as to whether it should be in the print media or in the broadcast media, the fact is that the broadcast media is there. The fact is that advertisers want to use that media to reach consumers and they will use that media to reach consumers. If it is not going to be one advertiser, it will be another in the long run. I do not see any basic fall-off in the use of the media for advertising purposes.

Senator Buckwold: Could we get into the statistics of Canadian-made as against foreign-made television commercials? We have noted, on the basis of the figures—and, again, we do not know how these figures are derived—that there has been a gradual increase over the last five years of about 7 per cent. In your opinion, does that represent a significant change in the production of large-scale or heavy exposure national-concern television commercials, or is it merely in the sort of smaller, less exposed commercials?

Mr. Siren: From my own point of view, senator, I do not think I am in a position to give a definite answer to that question without having the statistics. Only the agencies and advertisers have those statistics.

Senator Buckwold: What I am really trying to get at is whether or not you see a move by large advertisers in the direction of greater use of Canadian-made television commercials?

Mr. Siren: I believe there have been some larger, perhaps even continental advertisers, who have increased their Canadian production. There are others who have not.

Senator Buckwold: Do you consider commercials made in Canada exclusively made in Canada, or are some of them merely re-makes of those that have been done in the United States? I am talking now of the multi-national companies. In other words, they do not use Canadian writers; they simply take the script and tell the agency to re-run it in Canada. Is this prevalent?

Mr. Parrish: There is a fairly large pool of commercials that are done just that way. They were conceived and produced for use in the United States, using American talent all through. Very often when they are brought to Canada, for reasons of the laws of this country some of the copy being used in the commercials must be changed to conform. Practically all that is really changed in a commercial like that is to wipe the voice over, which is

the narration with the commercial, and put a Canadian narration on it.

Senator Buckwold: Is that considered a Canadian-made commercial?

Mr. Parrish: In our view, no.

Senator Buckwold: But in the eyes of those who report?

Mr. Siren: I am not in a position to answer that. The criteria on which these figures are based is not within my knowledge at the moment.

Senator Buckwold: One of the things that make it very difficult for this committee is that the information is very sketchy in most cases. I am interested in analyzing what is the Canadian content. In fact, because they have a label "Made in Canada," are they meeting the so-called Canadian impact that you are talking about?

Mr. Siren: Our proposal is quite clear. What we are desirous of seeing is a regulation that clearly designates a Canadian commercial as one that is produced with not only Canadian performing and writing talent but Canadian skills throughout.

Senator Buckwold: Do you find much encouragement for Canadian-made TV commercials for use by American companies? In other words, made in Canada to be bought by American advertisers for showing in that country? Yesterday we had a witness who indicated that he felt this was a growing market and would provide a good deal of empolyment for Canadian talent.

Mr. Siren: My information is that in proportion to the total production it is insignificant at the moment. I am not in a position to say whether or not it is growing. My information is that in the main, with perhaps one or two exceptions, the production of commercials for United States use is limited to regional campaigns in the United States, the one or two exceptions being use on a national campaign. There may be more than one or two, with which I am not familiar.

Senator Buckwold: As far as you are concerned this has not been of any significant impact on your industry?

Mr. Parrish: No.

Mr. Siren: Not sufficient to indicate that we should be wary of the need for the production of Canadian commercials in Canada.

Senator Buckwold: This leads to concerns that are expressed by others of reprisals; in other words, that if American imports are limited the Americans will in some way also put on some restrictions that would prohibit the entry of Canadian-made commercials. Is this a matter that worries you at all?

Mr. Parrish: If we were concerned only with that aspect, I doubt very much that it would make much difference to us. It might make some difference to a particular production house that found itself in the position where it was making a fair number of commercials of that order. As far as we are concerned, even with the figures that we have, if 32 per cent of all the commercials are made entirely outside this country—and it is an insignificant number of commercials of a local nature that are made in Canada for use in the United States—even if we lost that, from a selfish standpoint we would not be hurt at all.

The Deputy Chairman: Not too much.

Mr. Siren: Before we leave that, could I just supplement Mr. Parrish's remarks? I think more importantly we also have to view who is going to call the tune on our policies. I do not think it should be decided by persons or forces or groups outside of this country. I think we have to determine our own policies. While the determination of such policies must be made in the full realization of whatever economic impact it has—and I fully agree with Mr. Parrish that the economic impact is not that serious—I think it is most important that we view our future along the lines of our own destiny rather than allowing others to decide.

Senator Prowse: The information given to us by one of the groups of witnesses appearing yesterday was that the value of Canadian productions sent to the United States—in other words, commercials produced in Canada and sent to the United States—is now running in the neighbourhood of $6 million a year, which to all intents and purposes, as close as the figure goes, offsets the $6 million to $8 million that is lost to us by the importation of the 32 per cent brought in from abroad. They also indicated to us that the cost of producing commercials in Canada was approximately one-third—I think they said 30 per cent—less. I have seen other figures running down to 20 per cent less. I suppose it varies, depending on which commercials you compare. It was very substantially less to produce a commercial in Canada.

If this ban for which you ask is going to produce work that just equals the work being done by Canadian artists and production firms now, with other Canadians involved in this, and carries with it the possibility of a growing barrier to trade, if what you are going to gain is practically the same as what you could lose, would it not be much more realistic for you to be than not trying to sell the Canadian, whom you apparently have not been succeeding in communicating with, but getting out and selling the American people the idea that you have a product that they need, which you can produce more effectively and efficiently than they can, and then open up to yourselves a market of $250 million instead of limiting yourselves with the total Canadian market of $22 million?

Mr. Siren: In my view, that is a beautiful dream. At the point where our production in any way jeopardizes the productive capacity of the Americans they will be much faster than we are in enacting legislation to ensure that the commercials will be produced in the United States.

Senator Prowse: They might not have the same President, you know.

Mr. Siren: I do not think I care to comment on that point, in view of what is going on.

The Deputy Chairman: There are enough comments.

Mr. Siren: However, I can also say that from ACTRA's point of view many of the commercials being produced in Canada for American use are either entirely staffed by American talent or primarily staffed by American talent, so that from the point of view of talent we would not feel any great loss.

Senator Laird: Are not any of your members in on the act at all?

Mr. Siren: In some cases they are, but with most of the commercials lately brought in for American use alone the American talent comes with the producer and so on.

Senator Prowse: They pick up a few extras here.

Mr. Siren: There are some extras, and in some cases some principal performers. Certainly in many instances of recent date the cast has been entirely American.

Senator Prowse: We have had some Canadians who have gone to produce commercials in the United States, who I presume are members of your organization.

Mr. Siren: I suppose there are some instances.

Senator Prowse: Did not Aldred at one time regularly fly down to Hollywood?

Mr. Parrish: Yes, that is true.

Senator Prowse: And one or two others.

Mr. Parrish: And some others did too.

Senator Prowse: Joe Cameron was in on that.

Mr. Parrish: Whether or not you are capable of going or allowed to go is determined again by whether or not you can get membership in the Screeen Actors' Guild. I do not belong to the Screen Actors' Guild, but if I were today to make application to the Screen Actors' Guild I would have to supply them with information that somebody wanted to use my talent on that particular production. The producer would apply to SAG and say "We have this Canadian we would like to use. What do you say about using a Canadian?" And SAG would surely say, "We do not need him, thank you; we have people here." SAG would not tell me directly that I could not, but they would go to the American immigration authorities, and the American immigration authorities would effectively stop me on the border. That is the condition now. A few people that did go, like the Aldreds and others in early history, when there was not any restriction on becoming a member of SAG, got what was called the green card and were able to work, but we as Canadian performers are now effectively prevented from doing that.

Senator Davey: May I just clarify this? Then you are not at all concerned about the question of the requirements of your having your market in Canada?

Mr. Parrish: No.

Senator Davey: I have no axe to grind but I just wanted to find out about that.

Mr. Parrish: That is right, we are not concerned.

Senator Davey: If you get the Canadian market for yourselves, you think that will meet the needs and serve Canadian performers?

Mr. Parrish: We believe it will.

Senator Buckwold: I just have one question, and it may be that after that Senator Davey will ask another one for me. There is one thing I would like to know about, because I have heard of this and I would like to get it on the record, if it is the case, that not only are American companies using American films for the Canadian market but in many cases, or perhaps in some cases, very large Canadian companies prefer to have their commercials which will be shown in Canada made in the United States. Could you amplify that a little?

Mr. Siren: There have been instances over the years where that has occurred. I think it is diminishing of late. I do not recall a recent instance, but we did have situations where publicly owned companies, in the transportation business, banks, and other major advertisers that are Canadian advertisers, did go to the United States to produce their commercials.

Senator Buckwold: Why would they do it?

Mr. Siren: I suppose there is a host of reasons—none of which I would find acceptable, but they nevertheless found their own reasons.

Senator Buckwold: Have there ever been instances of the Canadian government advertising being made in the United States?

Mr. Siren: Not a department I can think of, but Crown corporations, yes.

Senator Buckwold: Crown corporations have used American made commercials in preference to Canadian?

Mr. Siren: Yes, that is right. They produced commercials in the United States.

Senator Buckwold: Perhaps I could ask Senator Davey, when he is questioning the witnesses, to move into this area of the cultural impact.

Senator Davey: You go ahead and do it.

Senator Buckwold: I think you should do it, as you could go a long way on that, and I have asked many questions already.

Senator Davey: Mr. Parrish, the first question I have is, where is the 4,000 membership of ACTRA located? Where do these people live?

Mr. Parrish: The bulk of them are located in Toronto.

Senator Davey: What percentage is outside Toronto?

Mr. Siren: We have a membership of 3,800, and a little better than 2,300 are located in Toronto.

Senator Davey: Therefore, by quick mathematics that would be—

The Deputy Chairman: 60 per cent.

Senator Davey: What do you do particularly to encourage the 40 per cent who do not live in Toronto? I want to speak in a moment or two about the $75,000 people and underline the point that these are few and far between. I think it is very important that you stress to the committee that 4,000 people average $1,000 a year, and it is terribly important to leave us with that impression. It is equally important to tell us what you do to encourage those outside Toronto. I am sure all of the big people, who are making the big money, are in Toronto. What do you do to encourage people outside Toronto? What particular steps do you take to help them?

Mr. Siren: We have certainly subscribed to the philosophy that it is most essential, it is imperative that we communicate, one region with another within Canada. That is why we have ten branches of ACTRA. We have a branch and an office that is staffed and paid for by ACTRA in Vancouver, Calgary, Edmonton, Regina, Winnipeg, Ottawa—Toronto, of course, being the headquarters—Montreal, Halifax and St. John's Newfoundland. We attempt to encourage the development of these branches. These branches in themselves participate in urging the CBC to develop local programs, regional programs. They attempt to urge the private television network to produce programs—and we have not had any success in private radio, that's for sure, except in the way of having announcers. Certainly, our whole philosophy has been to attempt to promote and enhance the production of programs in the recorded media in all of these regional centres.

I might say that we made representations to the CBC board of governors to separate Alberta from the western region which the corporation had for many years. The corporation finally decided to do so. I am not suggesting that they decided only because ACTRA requested it, but that decision was arrived at some two years after our representation, so that Alberta is now a production region by itself.

Senator Davey: Could an American join ACTRA?

Mr. Siren: Yes and no. At the moment we are not encouraging Americans to join ACTRA. There are however some agreements, such as our CTV agreement, where an American comes in. A prime example of that would be the "Police Surgeon" television drama series, where there is an American performer. In those instances he joins ACTRA.

Senator Davey: Could a French Canadian join ACTRA?

Mr. Siren: Yes.

Senator Davey: Mr. Parrish, I wonder if I might put a question to you, to buttress the point you have made about the availability of Canadian talent, that there are not many things which members of ACTRA could not do if there is the demand. To indicate that, I thought you might say something about the success of ACTRA awards. I confess immediately that there is a conflict of interest, because I am a judge on several panels. I hasten to underline that I am an unpaid judge, so the conflict of interest is not all that real. When I attended the ACTRA meeting this spring I thought the growth and development of ACTRA was really remarkable, and I think you might say a word or two about it.

Mr. Parrish: I would be happy to do so. ACTRA, as Mr. Siren mentioned, is very young. We have been in existence in one form or another for longer than ten years, but the structure we have now is only ten years old. I suppose we are restricted, mainly because of financial considerations, because we are anything but a wealthy union and it does take money to do things like the ACTRA awards. We hesitated to do this without feeling that we would be successful and that we in fact could handle the expenses involved.

For a number of years we did make one single award and we presented it at the film awards annual occasion. Eventually, a group of us got together and decided that we had gone along on the shirt tail of somebody else long enough and that it was time we, as an association, recognized that there were good performers, and performers worthy of being awarded, within our own ranks and that it was up to us to say, "This is good. We are going to do it, and we are not going to rely on the judgment of somebody else at all." By that I do not mean the judgment of the panel which makes the decision. We were very pleased with the result of this, as it has had a number of effects. It draws attention to the fact that we, as an association, do have performers of the calibre who received awards, and it also brings together a lot of Canadians who normally would not have either seen or been interested, perhaps, in the performance that we are speaking of, because usually it is an individual and a particular performance that is being made the subject of an award. The success of it has been enormous. Frankly, we are overwhelmed. We also are very much aware, as Mr. Siren said, that as far as making our talent available is concerned, it is up to us, in whatever degree we can, to make sure that the talent that is part of our membership is known to the people who are potential employers.

We are the only union in the world, so far as I know, which single-handedly puts out a talent catalogue. We call our catalogue "Face to Face with Talent".

The one that is now in the offices of potential employers and other places is two years old or more, but there is one in the making which should be available to employers this month. It is free of charge, of course.

Senator Davey: Would it be possible for the committee to have a copy of that catalogue? It would be most helpful.

Mr. Parrish: We would be happy to send a catalogue, or a number of catalogues, if you wish. We can send

you the kind now in existence, but perhaps the new one would be better.

Senator Davey: If we could have copies of the one that is in existence now, that would be a great help.

Mr. Siren: We would be happy to do that.

Mr. Parrish: Now, the decision was taken to do this after consultation. As a matter of fact, it arose to quite a degree in our discussions and negotiations with ACA and ICA because the question was raised that there was not enough talent in Canada. We say there is and the employer says, "Well, where is it? I don't know where it is."

Senator Davey: The catalogue dramatically makes the point, and if you could send one to the members of this committee it would be very helpful.

Senator Forsey: When will the new catalogue be available, Mr. Parrish?

Mr. Siren: We are just waiting for the printers to finish the job, senator. The catalogue will be available some time this month.

Mr. Parrish: It is an enormous consideration, but we, being novices, only discovered that after we had gotten into it. As somebody said, next to Eaton's ours is the biggest catalogue.

Senator Davey: It is more attractive, anyway.

Senator Laird: Do you categorize talent?

Mr. Parrish: We categorize talent, yes. There is a picture of the talent, the category of performance and, if there is an agency involved, the talent agency involved is there as well.

Senator Fournier (Madawaska-Restigouche): Are there any senators in the catalogue?

Senator Laird: There should be.

Senator McElman: Does it have a centre fold?

Senator Davey: An additional point about the awards should be noted: they were not all taken by Toronto performers. There was a pretty good geographic distribution of award winners.

Mr. Parrish: Yes, and particularly since the bulk of the production takes place in Toronto, you would almost expect that most of the awards would go there. That perhaps is the case.

Senator Davey: I should explain, Mr. Parrish, that some of my colleagues are very critical of the city I come from, and that is why I am off in this particular direction.

I should like now to pursue briefly a line of questioning begun by Senator Buckwold. He referred to the current ACTRA agreement and the reference thereto included "as signed by" all the members of the ICA in advertising. That is the reference, so far as this agreement is concerned, that every effort will be made to encourage advertisers to produce television and radio commercials in Canada. In response to that, Mr. Siren, you talked about their best intentions. You did not impute motives and you did not question their integrity. I wonder how you feel about the statement by the president of the ICA, which is carried in the current issue of "Marketing", in which he says that the ICA, as an association, could not come before this committee because the industry is very split on this issue. How can the industry be split on this issue, if this particular clause is contained in the agreement that one signs in order to become a member of ICA? I wonder if you intend to protest the position taken by the President of the ICA? I do not impute motives either, or question integrity, but I think it is a very strange position for the ICA to take, given this ACTRA reference in the agreement.

Mr. Siren: If the industry is indeed in opposition or seriously split on the intent expressed in our agreement, that would certainly be a very serious problem and we would have to take that matter up with all the force that we can command. If the industry is split on the methods and the application of that intent, that I suppose is another question.

I might say that that particular provision in our agreement with the industry took some doing. It took two or three years of discussion, pushing, prodding, probing and convincing before that limited provision, which really expressed an intent and does provide for the committee for the promotion of Canadian production, was achieved.

Senator Davey: Have you seen the statement by the ICA?

Mr. Parrish: Yes, I might say it is our intention to have meetings with the industry on this question.

Senator Davey: You mentioned that you had begun a process, and I think you said your first meeting was in 1968 when you appeared before the CRTC in Moncton.

Mr. Parrish: That is correct.

Senator Davey: Then you made a presentation to the joint meeting of the ICA-ACA. Have you continued to lobby ICA and ACA? A further question to that is, assuming that no legislation comes out of this at all—and, as you know, I hope something will—and assuming that there continues to be this snail's pace development, would it be more important for you to lobby the agencies or more important to lobby the advertisers?

Mr. Siren: Sir, in response to your latter question, I think the advertisers make the decisions in this industry. It will be the advisers who will decide the course of events. The agencies will, of course, provide some leadership in this area, but I would think that the agencies will do as the advertisers demand of them.

The view we have with respect to further discussions is that we will not exclude discussions with the industry at any time. On the contrary, we have been carrying on a continuous discussion regarding a means by which the production of Canadian commercials can be increased,

but our view and our conclusion is that what you describe as a snail's pace growth, and I concur with that description completely—

Senator Davey: We get to 100 per cent some time after the year 2000. That is a snail's pace.

Mr. Siren: That is right. That kind of thing will continue. I do not see any indication that it will improve in terms of rapid development, and that is the reason we come to the conclusion that regulations are necessary and that they must be brought about as quickly as possible.

Senator Davey: Referring back to one of Senator Buckwold's areas of concern, that is, the work which is being done in Canada for us in the American market, you made the point which is terribly important that, while the work is done in Canada, American talent is brought up here to do that work. That confirms my understanding, but if there is any kind of hard evidence which you could give in this area, it would be terribly helpful to the committee when it is deliberating.

Mr. Siren: We will do that. We will provide the committee with that information.

Senator Davey: Earlier this morning a question was raised with respect to radio station I.D.s, which strictly speaking are a form of advertising. Are they all done in the United States?

Mr. Parrish: Every one of them.

Senator Davey: Is there a Canadian capacity?

Mr. Parrish: Yes. It would cost more money than the condition which exists now, and the reason it costs more money is that there is in existence what we refer to as "bootlegging jingle houses" which are located in the southern United States. They have people who are on staff who blow the music track. The vocal group then adds over the track and it may be the same track for a million different areas, but they add the new call letters. It is all done on a salary basis. The musicians and singers involved are paid a salary and they just churn out as many as they possibly can in the period of a day. At the moment we do not have the capability within the agreements that we have, the peformer agreements to do that kind of thing. We did, as an experiment on one occasion only, produce some I.D.'s which, I believe, were of equal quality to the things that were coming out of the U.S. houses, and of about 26 of those that we did in one concentrated effort to see if it would work, only one was accepted by the employer, and he said that he had accepted that one because it was the only one out of 26 that had met the standard that he expected. Quite frankly, I think that I know enough about music and singing, in particular, that I feel he was wrong in his judgment, but we are not able to tell him that he is wrong because he, in the final analysis, is the man who does the buying.

Senator Davey: Mr. Parrish, you are a broadcaster. Are there still radio stations in Canada programmed out of the United States?

Mr. Parrish: Yes, I believe there are.

Senator Davey: I would like to pursue that, but that is not the work of this committee.

I have two other questions, and one is perhaps to have you underline a point you made earlier, that you are not interested in seeing less television and radio commercial production done in Canada, and so you would not come forward with the kind of posture you have, if you thought that was going to result in less radio and television production. Have you thought, for example, that advertisers would put their money into newspapers? Is that a fair assessment of your position? The reason I raise the point is that one of the arguments we are hearing is, "Okay, if you have some kind of legislation, what you will really do is decrease the take for Canadian talent because there will be less work done." Could you comment on that?

Mr. Siren: That is our position. I think the history of advertising participation in television and radio since the inception of the industry has been one of constant growth, constant development, and I do not foresee that diminishing, unless, of course, there are general economic conditions that control it. But, as I mentioned before, there may be some individual campaigns, individual advertisers may switch from one medium to another, but I am convinced that the advertising industry of this country will want to use the television and radio media to the optimum.

Senator Davey: Finally, Mr. Chairman, perhaps I could ask Senator Buckwold's question—perhaps I am speaking for Senator Buckwold. As interested as you are in the care and feeding and welfare of the members of ACTRA, it was encouraging to learn fairly early in your presentation where you spoke about the relationship of the Canadian television production being done in Canada to a Canadian identity as it related to the cultural impact. I think the members of the committee, and Senator Buckwold in particular, would appreciate having you expand upon the contribution which advertising makes to a country's culture, if you feel that advertising is making a contribution to expanding some sense of Canadian identity.

Mr. Siren: We might both take a crack at that one. First of all, I feel you cannot divorce advertising on television and radio from the cultural impact it gives to the population of the country. It is part of the medium. You cannot have commercials, four and five commercials in a clutter, if I may use that word, every 12 minutes or so without having an impact. Whether that impact is good or bad depends a great deal on what is involved, and since advertising uses the personalities, the entertainment personalities so often, it has an even greater impact. It has an impact also in terms of what it is attempting to convey to the viewer, to the purchaser and the consumer, in terms of the mores, the whole approach of our society. It cannot divorce itself from that social fabric in which it exists and, therefore, in our view, advertising has a key role to play in the entire cultural development of our national identity; and to allow it to be

determined outside the borders of this country would in fact be a very serious breach of the very valiant attempt we are making in this country to develop our own national identity and national culture, embracing, as it does, all the regions or all of the cultures that we have been able to achieve from around the world, which make it that much richer. It seems to me that if we forfeited this important area of impact in our culture, we would be committing a serious error for the future.

Senator Laird: A supplementary?

The Deputy Chairman: Yes. It is very interesting, as a matter of fact, as we all realize, but I think time is passing. It is now 11.10 so we will take another five minutes, and we will then hear l'Union des Artistes.

Senator Laird: The supplementary is very simple, Mr. Parrish. There was a question in connection with this cultural aspect of the Canadian accent. Did you mean that literally or figuratively?

Mr. Parrish: In both ways. There is, I believe, a distinctive Canadian accent—and I am now speaking from ACTRA's standpoint. When I am speaking about that I am speaking about the English aspect of Canada and there is, indeed, an accent within that English-speaking group that is quite distinct from a lot of the accents we hear coming from the United States. It is my feeling that it would be nice for us here in Canada to recognize the difference between a Canadian and someone from some place in the United States. We tend to readily accept a Louisiana accent, for example, we understand one of those; but there are lots of others, mid-western accents, that are completely foreign to us and we do get those, in particular, in commercials that perhaps deal with cartoon characters. Those are the ones that seem to arise more than in other instances.

Senator Laird: Yes, but you get, even in commercials on American stations, I have heard, plenty of them with a distinct British accent.

Senator Prowse: That was Boston!

Mr. Parrish: Were they selling Ensign cars? Very often that happens with British products, where they will use it to fit in with the product that is being sold. In other instances, I suspect that it is an affected British accent by an American actor. It is sort of the universal accent for the stage, a kind of British accent.

Senator Laird: It did not seem objectionable to me.

Senator Buckwold: When you want to give the illusion of class, you give a British accent.

Senator Denis: I have only one question. According to you, commercials made by Americans are rather cheaper than Canadian-made commercials. Is this because it is cheaper, or is it because of a higher quality, or is it because it suits best the advertisement of the product he wants to sell?

Mr. Parrish: I believe we could use as an example the case of an automobile sold in Canada, an automobile that is identical to one sold in the United States. The commercial is produced in the United States and, as far as the Canadian market is concerned, it would not even recognize that the automobile did not have an Ontario licence plate, because it would all be shot in Detroit where they would not have that licence plate at all. That does not matter to us, or it seems not to matter to us, that that should be the case. I am convinced that the real reason for bringing the commercial in, apart from the fact that it has proved to be a success with audiences in the United States, is because it is cheaper. It is infinitely cheaper to do it that way than to reproduce it here.

Senator Denis: It is not of higher quality?

Mr. Parrish: I would not question whether the quality was higher or not. As a matter of fact, if you have a budget of enormous sums of money, as many of these commercials do, the quality is bound to be better. It will indeed be a very high quality product, and I cannot question that at all. You could not begin, for example, to produce that commercial in Canada and make it economically feasible.

Senator Denis: So, if a ban were to be placed on the importation of these commercials, it would follow that the Canadian businessman would have to pay much more to advertise his product.

Mr. Parrish: Here I should make the distinction between the multi-national corporation and the strictly national Canadian corporation. The national Canadian company now does, in fact, have to pay that sum because it does not have the advantage of being able to use the American commercial which has been paid for in another market altogether. What we are talking about here are multi-national corporations which have the advantage over Canadian national companies, in that they can get this beautiful commercial at a price which is way below what a Canadian manufacturer would have to pay to achieve the same thing.

Senator Denis: So, according to you, there should be a distinction—if we should decide to recommend an amendment to the legislation—as between multi-national corporations and national companies?

Mr. Parrish: I don't know that it would be necessary to make that distinction. What we are saying here now is that, in our opinion, the greatest offender to us is the commercial that is part of the multi-national corporation's advertising campaign.

Senator Prowse: Where they are selling the product in both countries and to the same type of market.

Senator Graham: You mentioned that legislation should be introduced—and that is what this hearing is all about—so that commercials should be totally produced in Canada, unless climatic or other special conditions intervene. Yesterday one of the witnesses said that this could be accomplished almost overnight, and then modified his answer to say it could be accomplished in one year. Another witness warned us that we should be very slow

in this whole process. Now I am wondering, taking into account the availability of talent and skills in Canada today, how soon the industry could cope with such legislation, or meet the terms of such legislation.

Mr. Siren: My personal view is that it would be a matter of months, or perhaps a year, for that type of production. I am convinced that the skills available in industry for innovation and for the development of new concepts that would be required, are all there, and can be unleased and ready to go. But there may be other things that would be required in the future.

I might add that in addition to what ACTRA has been able to do as an association, I have suggested to the Canadian Council and other sections of industry that at some point we should consider a uniquely Canadian institution to provide a talent library, certainly of performing talent and perhaps of other talent, in an audio-visual manner, so that it would be possible for a producer in any part of Canada to see what talent is available as a national resource. However, the cost of that would be far beyond the modest means available to ACTRA. I hope that at some point in time we may be able to achieve that kind of service to the industry in this country as part of a national service. However, that is another subject.

The Deputy Chairman: Thank you, Mr. Parrish and Mr. Siren, for your generous co-operation. I am sure that all the members of the committee were interested to hear your comments.

Now I should like to ask the members of the committee if they would adjust their simultaneous translation facilities, because we are now going to hear some witnesses from Montreal. Of course, they can speak English, but they did not have time to translate their brief from French into English.

[*Translation*]

On the Committee's behalf, I welcome Mr. Robert Rivard, President of l'Union des Artistes, and his colleague Mr. Jean-Paul Dugas, both well-known in the field of the arts in our Province.

[*Text*]

As I said before, l'Union des Artistes did not have time to translate their brief into English, for which they apologize. So I shall ask Mr. Rivard to read their brief, and that will then give you an opportunity to ask questions.

[*Translation*]

Mr. Rivard, if you would proceed immediately.

Mr. Robert Rivard, president, l'Union des Artistes: Thank you, Mr. Chairman. I would first like to introduce l'Union des Artistes to the Committee. Our union is a professional one, grouping over 1550 full members and more than 800 apprentices at present. As announcers, singers, dancers, etc., they exercise their art in the theatre, cinema, radio, television, dubbing and advertising. Our objective is to study, defend and develop members' economic, social and moral interests.

The Union has just settled a minor labour dispute with its office staff, and we were only advised of the Committee's invitation last Thursday, July 5. Unfortunately for us, we have not been able to prepare as complete a brief as we would have wished. But we did want to take advantage of Senator Bourget's invitation, for which we thank him, because the point raised by Senator Buckwold is extremely important, and we would like to congratulate him on his initiative. Without going out of order, we shall attempt to enlighten the Committee and Senator Buckwold, who admits himself that he is not very familiar with the problems of French-speaking artists. We shall present an overall view of the situation of artists in French Canada, a situation very similar to that of our English-speaking colleagues. They must combat invasion by American culture, and we must avoid being submerged by the increasing inroads of productions from France and other francophone countries. We do not want to break ties of friendship based on historical affinities, or to be chauvinistic, but our television market is not only being invaded by broadcasts from francophone countries—and we submit as evidence to this effect Radio-Canada's summer schedule—but all the feature films and most of the American and foreign programs broadcast here are dubbed in France. Although dubbing is a by-product, and although to some extent it constitutes cultural alienation, it is still profitable for cultural technicians and craftspeople, as is advertising and it is preferable that dubbing and advertising productions be done in Canada by Canadians, thus avoiding double cultural alienation.

Imported advertising seriously affects our English-speaking colleagues, but it does not leave us untouched. Culturally, these ads reflect nothing of our Canadian life. Usually, the storyline has no relation to our customs. Family relationships are different, and the difference extends to the actors' physique and accent, in which the average Canadian cannot recognize himself. Constant exposure to the American way of life endangers our Canadian identity. Dubbing American ads into French employs only one or two announcers, who are usually already employed full-time by a radio or television station. Were these ads made in Canada, hundreds of Canadian technicians, producers, scripwriters and artists would be hired, and the aforementioned announcers would still not be unemployed.

It is high time to recoup as much as possible, like the United States with its Labor Act of 1957, which broadly restricts participation by foreign artists; to recoup, we say, production possibilities in this industry, and thus to increase employment for all our craftspeople.

In the comparative income table we have submitted—Table I—please note that advertising work constitutes 29% of total income for artists, i.e.: a weekly average income of $46.84 for the 857 members who participated in said work in 1972. This income, though modest, enables, them to practice their art more freely in other areas, such as theatre or cinema, which, though still less lucrative, may contribute to the artist's bare minimum living.

In the second table, which illustrates the income of all our members and apprentices, please note that, out of 2072, 1086 earned under $1,000.00, and 1652 under $5,000.00, the poverty level. Repatriation of advertising production and regulation of films and television programs from abroad, that is, mandatory dubbing of said productions in Canada by Canadians for Canadian agencies would increase the income of Canadian producers, directors, scriptwriters, technicians and craftspeople.

We support CRTC Chairman Pierre Juneau's statement at the 1972 Canadian Advertising Association Symposium:

> I am absolutely convinced that all the artistic and technical talent required to produce first-class advertising can be found in Canada.

Just last week, Mr. Juneau told the Parliamentary Committee on Broadcasting:

> Barring a marked increase in the quality and quantity of Canadian television programs, Canadian networks will soon be nothing more than a modern vehicle for other nations' cleverly commercial productions.

We are also in complete agreement with Senator Davey, who, in the Special Senate Committee Report on the Mass Media, predicts that within 10 years, half of the advertising industry in Canada will belong to Americans.

You will understand our shame and feeling of inferiority when, at an International Actors' Federation symposium last fall in Tashkent, we delegates from l'Union des Artistes and the Association of Canadian Television and Radio Artists heard Secretary General Rolfe Rembe say in his annual report:

> Actors' working conditions reflect, not surprisingly, the standard of living and the social system of the country in which they work. Generalizing, one may say that actors in socialist countries almost always enjoy better than average economic status; in Scandinavia, their status is average, and in the rest of the world, it is lower than average. At any given time, their unemployment rate is 75 to 85 percent in America, 75 percent in the United Kingdom, 5 percent in Austria, and 5 to 10 percent in Sweden.

The federal government is making a praiseworthy effort in subsidizing the National Theatre School for actors and technicians, and Quebec has its Provincial Theatre and Music Conservatory. The Quebec Ministry of Education now offers theatre options in its CEGEPs. It would be unfortunate if all these efforts merely trained cultivated unemployed people.

We feel that in a country like ours, a country flying high economically, and richly varied ethnically, a Canadian of any origin is entitled to entertainment and cultural activity, and a Canadian artist of any origin should be able to work in peace and to help his country develop culturally.

This concludes our submission. Thank you.

The Vice-Chairman: Thank you very much, Mr. Rivard. Mr. Dugas, have you anything to add?

Mr. Jean-Paul Dugas, Member, l'Union des Artistes: I would like to reiterate that we support our English-language colleagues completely, and that we fully understand their problems, especially vis-à-vis the United States, which we share, being a separate cultural minority, and I might add that we sometimes have the same problems vis-à-vis the rest of Canada. So we support you completely, and I feel we must not wait any longer to repatriate what is ours.

So, gentlemen of the Senate, it is up to you to help and support us. Thank you.

The Vice-Chaiman: Thank you, Mr. Dugas. Senator Lapointe?

Senator Lapointe: I would like to ask whether you have ever made representations in this regard to other bodies.

Mr. Rivard: We have attempted to do so at CRTC hearings. We have submitted briefs to the CRTC in several of the areas in which we are interested here.

Senator Lapointe: Do you feel that those of us in Quebec are less affected by American advertising than is English Canada?

Mr. Rivard: We get exactly the same level of American advertising, introduced in Canada in English, but in this regard, we suffer double cultural alienation, because we must translate the American mentality into French.

Senator Lapointe: But when American advertising reaches you, is it dubbed, translated by French Canadians?

Mr. Rivard: It is translated by French Canadians who attempt to adapt it, but the essence remains American.

Senator Lapointe: Is it always interpreted by French-Canadian actors too, or by real French people, from France?

Mr. Dugas: In the commercial field, the artists are French-Canadian.

Mr. Rivard: It must be understood that l'Union des Artistes considers commercials and dubbing the icing on the cake. We reserve both exclusively for full members, that is, the apprentice member must first qualify for them. He must follow the same admission procedure as our members, that is, after obtaining a certain number of work permits, a member becomes an actor, a regular member of our union. Only then does he have access to these two areas.

Senator Lapointe: Yesterday, we heard a witness from an American agency who said that if all ads were produced in Canada, those reserved for French Canada would be greatly reduced.

Mr. Rivard: I do not agree, because for some time, the Union has applied a regulation that an artist dubbing an American commercial must be paid as much as a lead actor. We hoped producers would see that if the actor has to be paid as if he were on camera, they

should do commercials here. This does not seem to have caused undue upset, because at present, there are no complaints. A French-Canadian actor is paid as much for dubbing as for on-camera work. We are really only hoping for production.

Senator Lapointe: But if, for instance, an agency had a certain budget, and producing ads in Canada increased its expenses, there would be little money left for ads done originally in French.

The Vice-Chairman: Furthermore, all the work would be done in Toronto, or so we were told yesterday.

Senator Lapointe: Yes, all the work would be done in Toronto, in English of course, and for French Canada, they would just be told to translate.

Mr. Rivard: We have always been on very friendly terms with our ACTRA colleagues. Until recently, memberships were mutually transferable, and will probably be so again soon, under different conditions. We propose eventual retention of this policy, but on equal grounds. This means that when an English commercial must be redone in French, there will probably be equal participation by English and French actors, as required by the commercial.

Senator Lapointe: Regarding commercials, we never get French ones in Quebec, from France or Belgium.

Mr. Rivard: I must say the experience has not been very felicitous for those who have attempted it. Having seen an ad made just recently, I understand the problem, because even European advertising style differs from ours. Delivery is not the same, mentality is not the same. There were a few attempts for instance, with a non-stick frying-pan; people made fun of the ad, and it was quickly withdrawn.

Senator Lapointe: When you do ads, how many are done in Québecois? How many in international French? How many in Canadian, that is, slightly in joual?

Mr. Rivard: If you like, I can perhaps make a point about the accent issue. The Quebec accent is quite simply the one I am using now. There is at present a fad I think will be very fleeting, the use of joual. Joual probably corresponds to parigot in France. On the other hand, in our various regions, we have accents as suave as the Marseillais, the Lyonnais, or any French accent. So when I speak of dubbing and double alienation, because most foreign programs and feature films are dubbed in France, we frequently have the amusing and sometimes ridiculous spectacle of Johnny Weismuller speaking in Tino Rossi's voice with a parigot accent.

Senator Lapointe: To return to commercials, we have beer commercials where joual is apparently preferred, for instance. What do you really think of this, yourself?

Mr. Rivard: In my opinion, it is just a fad, because my colleagues and I who do ads regularly are asked to do them in what we call international French, which is Parisian shorn of accent. It is, quite simply, what I feel we speak in Montreal.

Senator Lapointe: So you feel these ads could be as well understood and appreciated by French Canadians if they were done in international French?

Mr. Rivard: I must also point out that l'Union des Artistes is represented on two committees responsible for purifying commercials and spoken language.

Senator Lapointe: Regarding films from France or Belgium, do you feel their abundance is a sort of French neocolonialism?

Mr. Rivard: Completely, and increasingly obviously. Furthermore, this avalanche of programs from France is a burden on actors, because in Montreal, we produce French-language programs which could certainly be shown in France, with an additional 15 per cent for international rights, that is, Radio-Canada can use these programs in an exchange with France. There is an exchange which operates on 15 per cent remuneration for the artist alone, which means that the French programming invasion costs practically nothing. We also have it on good authority that Canadian programs exported to France stay in the can, because French law is very strict about the quantity of foreign broadcasting allowed on French airwaves.

Senator Lapointe: Is there not also accent discrimination? Is it true that French people cannot understand the Canadian accent?

Mr. Dugas: That is an old argument. I think it is a long story. Our English-language colleagues have mentioned the same thing. There is the London accent, the Louisianan, the Texan, the Alabaman; there are accents everywhere. France is the same. The Breton does not speak like the Vendéen; it is a similar situation. A Canadian like the Prime Minister, from Quebec, is clearly understood. Of course, there are different social classes everywhere in the world. Certain classes develop a slang or argot, anywhere. But I think the French understand us. The proof is that we are active in many areas, without any difficulty.

Senator Lapointe: Regarding French-language films—I mean Canadian-French co-productions—don't you feel there is an imbalance in the proportion of actors, for instance, like an elephant and a flea?

Mr. Dugas: It's terrible, because generally, in co-productions, that is, Radio-Canada with Belgium or French television, French-Canadian actors are scarce.

The Vice-Chairman: If I may, I would like to ask Mr. Rivard to explain the protection afforded French artists a little more fully, because apparently, from what he has just said, they are much better protected there than our artists are here.

Mr. Rivard: Since 1947, there has been a law in France requiring that all foreign productions receive the censor's seal. To obtain this seal, the production must be dubbed

in France. So film distributors can exploit the French market, have translation done there, and return here to double their profits by selling films dubbed in France, not only to our State network, but also to private industry. We have brought this problem to the negotiating table. We have been granted crumbs. To encourage the dubbing industry in Montreal, a few American series dubbed in Montreal have been purchased, but most are still dubbed abroad, in France.

Furthermore, when we persisted, we were told Radio-Canada must buy at the lowest price, which according to them, is in France.

Obviously, our rates have always been better than French ones, to encourage dubbing here, but we have been told more than this was required. They needed State approval, from the government or the House, to pay a little more for productions, and buy them here.

Mr. Dugas: It seems to me that competition between Canadian firms should suffice, without the constant threat of a foreign country with an economy completely different from ours.

The Vice-Chairman: How many dollars does dubbing in France represent? If dubbing were done here, would it represent a considerable amount?

Mr. Rivard: I can give you one example immediately. We are paid by line. As I just said, our rates are always lower than the French. The current Canadian rate is $1.05 per line, and the French rate is $1.40 per line, not counting the 36 percent social security added to that.

Mr. Dugas: I feel what raises the cost of work is that operating expenses are higher here; wages differ from European ones, which is why things are more expensive here. This does not apply for artists, because our rates are lower than French ones, in an attempt to keep the market.

The Vice-Chairman: What I wanted to know was, if this dubbing were done in Canada, rather than France, how many francs would it mean? Is this important?

Mr. Rivard: No, no, Radio-Canada, that is, the film owner or distributor, can afford to sell here, now, at lower prices, because he has already recouped his operating expenses, in France. So he comes here and offers our private and public networks, probably at a ridiculous price, a film series dubbed in France, which means, effectively, that films from France cost the distributor less than those done here.

The Vice-Chairman: Thank you. Senator Graham?

[Text]

Senator Graham: I was interested in the figure you used and the fact that you had 800 trainees. Incidentally, I want to congratulate you on a very excellent presentation and summation of your position, in view of the fact that you had only four days to prepare it, because of other problems that you had.

Would you explain what these trainees are involved in, and what your qualifications are for full membership?

Mr. Rivard: The qualifications are the same as those of our colleagues in ACTRA. If, after certain training, an actor comes to us we cannot keep him from working, so we give him a work permit. He has to get at least 30 permits in three years in order to become a regular member. During that time he can work in cinema, on stage, the theatre, and also radio and television. The two sectors which we keep for our regular members only, as I mentioned earlier, are the dubbing of films and the commercial department.

Senator Graham: Do you have any members outside of the province of Quebec?

Mr. Rivard: Yes. We have some members in Toronto and some in Quebec City. La Société des Artistes de Québec and L'Union des Artistes de Montréal have merged, and we are one syndicate.

Mr. Dugas: And also in Ottawa.

Mr. Rivard: Yes, we also have members in Ottawa.

Senator Laird: Do any of them make $75,000 a year?

Mr. Rivard: Table No. 2 sets out the exact amount of money earned by our members in 1972. These figures come out of the IBM machine which we use for sécurité sociale.

Senator Graham: One other question. Are you affiliated with any other union?

Mr. Rivard: With the CTC in Ottawa and the Federation of Actors in Montreal through the FDQ.

The Deputy Chairman: Senator McElman?

Senator McElman: Mr. Chairman, I assume from the evidence given by the two earlier witnesses representing ACTRA, that they support the principle of Maritime union. Since they have only one office down there, which is in Halifax...

Senator Davey: They have two offices; there is one in Newfoundland.

Senator McElman: That is not the Maritimes! The only two provinces without an office are New Brunswick and Prince Edward Island.

Senator Davey: There is probably no talent there.

Senator McElman: We have sent it all to Toronto, in an attempt to educate them up there.

Mr. Chairman, I would like to ask these witnesses whether they have a branch of any kind in New Brunswick, or whether they serve those individuals in New Brunswick in any fashion, since there are over 220,000 Canadians in New Brunswick whose mother tongue is French.

Mr. Rivard: No, we do not have any office there. We have some actors in our union who come from New Brunswick.

Senator McElman: In rough numbers, how many? You say they come from there?

Mr. Rivard: Yes. They are French actors from New Brunswick.

Senator McElman: But still resident in New Brunswick?

Mr. Rivard: No, in Montreal now. We have offices in Quebec, Ottawa and Montreal.

Senator McElman: They have been rehabilitated!

Mr. Dugas: W have maybe 20 or 25, no more.

Senator McElman: You have no service, then, to those who are performing in New Brunswick?

Mr. Rivard: Not yet.

Senator McElman: Do you have any intention of going there?

Mr. Rivard: Of spreading? Merging with Quebec was the first step we have taken in this direction.

Senator McElman: Steps are being taken now?

Mr. Rivard: Yes, definitely.

Senator McElman: I have a list of the larger national television advertisers in Canada. I would like to run through it quickly, if I may. There are about 10. I should like to find out if your organization has any substantial revenue from this group, or whether it is all done elsewhere. Proctor and Gamble?

Mr. Rivard: Yes.

Senator McElman: You do have?

Mr. Rivard: Definitely.

Senator McElman: Warner-Lambert?

Mr. Rivard: Warner-Lambert?

Senator Buckwold: Listerine, I think.

Mr. Rivard: Yes.

Senator McElman: General Foods?

Mr. Rivard: Yes.

Senator McElman: Colgate-Palmolive?

Mr. Rivard: Yes.

Senator McElman: American Home Products?

Mr. Rivard: No.

Senator McElman: S. C. Johnson?

Mr. Rivard: No.

Senator McElman: Bristol Myers?

Mr. Rivard: Yes.

Senator McElman: Sterling Drug?

Mr. Rivard: Yes.

Senator McElman: Kraft Foods?

Mr. Rivard: Yes.

Senator McElman: Imperial Oil?

Mr. Rivard: Yes.

Senator McElman: That is about ten. Is that substantial revenue?

Mr. Rivard: Yes, they all add up. If you take the third row in our Table No. 1 you have the revenue of Réclames publicitaires, $2,087,558.50.

Senator McElman: From these roughly ten, would that revenue be largely in original production or in dubbing?

Mr. Rivard: Dubbing.

Senator McElman: Those would be largely American produced?

Mr. Rivard: Mostly.

[*Translation*]

The Vice-Chairman: Are you hired by the client or the advertising agency?

Mr. Rivard: By the agency.

The Vice-Chairman: By the agency. Senator Fournier?

Senator Edgar E. Fournier (Madawaska-Restigouche): Mr. Chairman, being a New Brunswicker, I speak neither English nor French, so I shall put my question in joual.

Mr. Rivard: On the contrary, you have just proved that we do have pleasant accents!

A voice: Why not in Chinese, Senator?

Senator Fournier: Yes, that would be fine with me. There is something that slightly intrigues me in all this, in the two groups we've heard this morning. How is it that a number of them, representing thousands of young people, in the prime of life, full of energy, are willing to stay in a job that yields less than $1,000.00 a year? Can this be changed?

Mr. Rivard: You know, acting is almost a vocation. When one gets the "call", it is difficult to stop oneself. Most actors must have a second job to survive.

Senator Fournier: Yes, I think acting may be like politics. Possibly profitable.

Mr. Rivard: Without as much security.

Senator Fournier: That is—perhaps it's a little more complicated—but, all the same, there are people who don't eat three times a day, and if I were their age, and I was young once, I wouldn't stay in a job that didn't let me eat three meals a day. I would find something else.

Mr. Rivard: Many are called, but few are chosen; they give up, as you say.

Mr. Dugas: I would like to re-emphasize that in the case of those earnings $1000.00, we may assume they have other sources of income, another job, or rich parents or something, but more seriously, there are many, many people earning from $4000.00 to $10,000.00, and married people with children cannot live on such wages.

Mr. Rivard: Not without a second job.

Mr. Dugas: They are really living on the threshold of poverty.

Mr. Rivard: Furthermore, among them are middle-aged artists just subsisting, even after 20 or 30 years in the trade, with no chance to earn an honourable living.

Mr. Dugas: Yes, that is why I would like to conclude that we absolutely must repatriate the entire industry. It is a prime necessity; it is vital for the fate of Canadian artists. Or with all the people who will be graduating from schools, we must repatriate dubbing and other markets.

Mr. Rivard: It must be understood that the firms doing dubbing, synchronization and commercials are the ones with the cinematographic equipment. I feel repatriating dubbing and commercials will eventually give Canadian cinema more support than ASDIC can.

Mr. Dugas: There is something I find completely incomprehensible, and I would like to emphasize that we do not have the U.S. problem of a totally commercial industry. We have Radio-Canada, one of our main employers, required by law to promote Canadian culture and artists. I feel it is derelict in its use of our funds. Furthermore, it must be said and acknowledged, because many people are talking about it, and the industry is too, that Radio-Canada is slightly commercial, seeking as it does $40 million a year with advertising. Where and with whom will it get the money? With sportspeople and artists. I have rarely seen commercials during news or political affairs broadcasts.

So, actually, we are helping it earn a little more money. Put yourself in our place. Basically, we cost Radio-Canada absolutely nothing, since of the $44 million, we get barely two million, I think. Of the $200 million intended to promote Canadian culture and artists, this means absolutely nothing. These things should be considered.

[*Text*]

Senator Buckwold: My first question is really facetious, to add a little levity. I noticed that Mr. Rivard, in talking about the problems of actors, said that actors' physiques are different. I presume you did not include actresses' physiques?

Mr. Dugas: We are too gentlemanly to talk about that.

Senator Buckwold: Perhaps we should strike that from the record.

Hon. Senators: No!

Senator Buckwold: I want to ask, actually in your opinion, the number of TV commercials—I will ask another question about radio, because this is also part of our sphere of interest—made completely in Quebec. I realize there is a lot of dubbing going on. Do you have any figure? We have heard that 67 per cent of English-speaking TV commercials are produced and made in Canada. That figure is open to some question, and I am not sure whether they are in fact produced completely, but I am interested in the Quebec situation.

Mr. Rivard: The Quebec situation is that for 33 per cent of the importation we have to translate, of course, and dub in Quebec. We have also to translate a lot of the 67 per cent made in Canada.

Senator Buckwold: Are you prepared to accept those figures of 67 and 33 per cent?

Mr. Rivard: On the basis of a certain agreement with our colleagues in ACTRA, we have agreed to an equivalent participation on Canadian production.

[*Translation*]

Mr. Dugas: I think we might add that this problem is apparently created by small interests wanting to do television commercials and all that. Generally, they do so, I think, even in English Canada, with Canadian firms. Basically, those who could best afford to do this, but who do not, the big multi-national companies, as we mentioned earlier, send us work they have filmed in the States. They send it everywhere they sell their products. Actually, they could do things much more easily.

Of course there are dangers. One Senator mentioned earlier than we might have poorer-quality commercials if they all had to be produced in Canada, because we do not have the same budgets. I say might because I am not sure. Furthermore, there is a market here, and we are owed something, all the more since we are still a minority. You in English Canada are a minority vis-à-vis the United States. We are one vis-à-vis you, and this might reduce the budget slightly. But I think good commercials can be made for six million, seven million, or even two million people, with everything these companies get here. We have all the figures.

[*Text*]

Senator Buckwold: I would still like to get something on the record as to the number or the percentage. So far we do not have really very much indication of the scope of the problem, and that is really what we would like to know.

Mr. Rivard: It may be we could work out something back at the office as to the proper percentage of these commercials.

Senator Buckwold: I think we would appreciate getting this.

Mr. Dugas: We realize it is very important for you.

Senator Buckwold: Offhand, somebody has said that we have 85 or 90 per cent being made in Quebec now, but

the problem is not as pressing if only 50 per cent are made there. Perhaps I should not even say that.

Senator Prowse: You are coaching your witness!

Senator Buckwold: We really want to get the scope of the problem. Could we refer now to radio commercials? Could you make some comment on that?

Mr. Rivard: Most of our radio commercials are made in Montreal in French, and there is no dubbing and no picture involved.

Senator Buckwold: So the radio commercials are produced in Quebec?

Mr. Rivard: Yes.

Senator Buckwold: You referred a little earlier to the number of commercials made in Toronto and then dubbed in French in Montreal. Could you expound a little on that?

Mr. Rivard: Probably because of an 8 per cent tax that was made in Quebec lately on production of commercials, most of the producers, agencies that produce commercials, had to go to Toronto to make them, saving this 8 per cent. We expect to have this situation regularized. As I mentioned earlier, this agreement with ACTRA was an exchange of cards, so that when people are making English commercials in Montreal the Union des Artistes would provide the background for the commercial and ACTRA would give work permits to our members and use our members. The same would apply in Toronto. But as the production moved from Montreal to Toronto, in fact on the commercials we had only the principals that were imported from Montreal, and on the rest there was no participation of our union members. But now we are working on another agreement that will probably mean that on every commercial that will be made in English or in French in Toronto, or in English in Canada, we will have equal participation of both our associations.

Senator Buckwold: You spoke of an 8 per cent tax in Quebec. That presumably is a provincial sales tax?

Mr. Rivard: On production.

Senator Buckwold: The Province of Ontario has a 7 per cent tax.

Mr. Rivard: On production? I do not think so.

Senator Buckwold: Does it not apply in a similar way in Ontario?

Mr. Rivard: It is not applicable to production.

Senator Buckwold: I still do not quite get the implications of your previous reply regarding the Canadian made commercials in English as they are dubbed in for the Quebec market . . .

Mr. Rivard: As I mentioned, our fees are the same.

Senator Buckwold: Let me give you an example. Say a company makes a first class commercial in Toronto . . .

Senator Prowse: With Lorne Greene.

Senator Buckwold: Forget Lorne Greene, as that would introduce a complication. They make a commercial for toothpaste, and then decide they want to show it on the Quebec market. Then they ask somebody, not to remake the commercial but just do dub in the voices. Is that what you are talking about?

Mr. Rivard: Yes.

Senator Buckwold: Actually, all that would happen would be that your people would go down and dub in the voices. Would that happen in Montreal or in Toronto?

Mr. Rivard: Mostly in Toronto.

Senator Buckwold: Thank you.

Mr. Rivard: We work on the system of the Union des Artistes scale of remuneration. That is why we raised our fees, so that the fee to dub this particular commercial would be equal to the participation on camera, on screen. We are expecting that this would equalize the production.

Senator Buckwold: Except that in that case it would be only for an actor. There would be nothing for a producer or a technician.

Mr. Rivard: Most of these announcers stand in the scale of revenue of our members in the bottom part. Most of these announcers are already hired by television or radio stations.

Senator Buckwold: It is supplementary income?

Mr. Rivard: Yes.

Senator Buckwold: So, in fact, it would appear the Quebec artists, technicians, producers and writers have some problems in so far as the English are concerned.

Mr. Dugas: That is why we understand their problem so well, because after that we will be able to understand each other, between Canadians.

Senator Buckwold: Some of us thought you really had it all your own way, with no competition, that you just made your commercials, but I can see that it is much different.

Mr. Dugas: There is sometimes a problem to have it correct. We understand that American life is different from Canadian life, and sometimes the life of people in Quebec is different, too. If they present, for example, a woman in a house in a Toronto suburb, it is not exactly like that of a French Canadian woman in Longueuil.

Senator Buckwold: Some of us might take the young lady in Longueuil.

Mr. Rivard: And the reverse, of course.

Mr. Dugas: This is why we understand the problem.

Senator Davey: I apologize for prolonging the discussion of percentages and what is done where, and so on. There are a couple of questions that I would like to ask.

I would like to quote from the brief presented to the committee yesterday by J. Walter Thompson Inc. I appreciate I may be going over ground which you have discussed and I want to be perfectly clearn on that. Referring to Quebec, this brief says:

> Rough industry estimates indicate original French production has doubled in the past five years and expectations are that it will be doubled again by 1978.

I wonder if Mr. Rivard and Mr. Dugas agree with that statement?

Mr. Rivard: We have not noticed a big increase. I have read the figures for 1972. I have in my office figures right back to 1967. It has been increasing, but I do not think it would be at that rate.

Senator Davey: But it has not doubled in five years?

Mr. Dugas: It has not touched it yet, with our members.

Senator Davey: Then you do not expect it to double?

Mr. Dugas: But if we discover more land.

An Hon. Senator: And on top of this there is inflation.

Senator Davey: Are there any American commercials done in the United States in French for the Quebec market?

Mr. Rivard: No.

Mr. Dugas: Very few.

Mr. Rivard: They do have an English commercial with the actor speaking in English, of course. Right after that they give the actor a French version of the commercial. He only lips it to get the copy ready to put the French back on it.

Senator Laird: There is no voice involved?

Mr. Rivard: No voice; he goes on with the lipping. It would sound bad if he did it in French with an American accent, so he lips it and we put the voice back in French.

Senator Davey: What percentage of commercials done in English Canada, probably chiefly in Toronto, are done in French for your market, without any dubbing?

Mr. Rivard: We will have to study the figures back at the office and send you all that information.

Senator Buckwold: Is it significant?

Mr. Rivard: Done in French directly?

Senator Davey: Yes.

Mr. Rivard: It is quite substantial but the percentage for dubbing is bigger—definitely.

Senator Davey: Much bigger in dubbing?

Mr. Rivard: Yes.

Senator Davey: You spoke earlier about the culture shock of the suburban Toronto housewife as opposed to a suburban Montreal housewife. Are there instances of English Canadian advertising agencies or American agencies coming into Quebec and performing totally in French in the milieu?

Mr. Rivard: Yes.

Senator Davey: To what extent would that be?

Mr. Dugas: For the exact figures we will have to work on that. We realize more and more that it is very important and we should be able to give you that information, because we can really do something from those points especially.

Senator Davey: I should like to change the direction momentarily, if I may, and pursue your reference to the good life enjoyed by actors and artists, and so on, in socialist states. I am not sure you reached a conclusion.

Mr. Rivard: They were all just plain facts taken from the questionnaire sent to at least 37 nations.

Senator Davey: Do you think that if we had a socialist state you would be in better shape?

Mr. Rivard: We have been around and our colleagues from ACTRA would testify that we have seen some very interesting conditions of life for the actors in those countries.

Senator Davey: I think you would agree that the United States is not a socialist state.

Mr. Rivard: They have their problems, too.

Senator Davey: The artists?

Mr. Rivard: Oh, yes.

Senator Prowse: Seventy-five per cent of them are unemployed in the United States.

Mr. Rivard: It is the same as in Canada.

Senator Davey: But the remarkably successful artists reap far greater rewards in the United States than in socialist states. Would you not agree with that?

Mr. Rivard: Well, it is the same as here. We have a certain number of actors earning over $30,000. We have 33 actors who are earning over $30,000.

Senator Davey: You think that a comparable scale exists in the United States, do you?

Mr. Rivard: It would be about the same.

Mr. Dugas: It would be about the same, considering the number of people they have there. If I may add a point, speaking about the socialist countries and so on, so far as I am concerned we are living more and more in a socialistic way in our country now. The proof of that is that we pay a lot of income tax and we take care of a lot of people, and I think that pretty soon we will have

to take a little more care of the artists, in general, in our country. It has to come, because, just to give you an example, a young actor who graduates from university with a B.A., in whatever field, then has to go on to a conservatory, or some place to study dramatic art, and he is usually there for three years. He then gets out of there and goes on the market. Maybe he is 22, 23, 24 or 25 years old. Well, if he wants to get married two or three years afterwards, it is almost impossible for him now.

As it is now, the best thing that can happen to him in Canada, in Montreal especially, is that he will be given a part in a serial, in which case Radio Canada will very generously give him $175 a week, with perhaps a guarantee of 13 weeks.

The Deputy Chairman: Thirteen weeks?

Mr. Dugas: Thirteen weeks, yes, in a serial of 39 weeks, because the young actor is, of course, new in the business and they are not going to hire him for 30 weeks. There are very few people who get hired for 30 weeks. So the young actor can work a little at the theatre—you have the figures—so it is almost impossible for him to have a normal life. Another guy, you know, coming out of university from another field, and actors are very well prepared by their education and after that to specialize as an actor. That cannot continue forever; we have less and less actors and that is why we have so few people every year.

Senator Prowse: I am just wondering if the reason for that maybe that anybody who wants to get into the acting business, and gets in, can stick there as long as they do not starve to death. They can stay around there to be counted among the unemployed, I won't say regardless of the talent, but regardless of whether it is the talent for which a market exists. Now, in the socialist states are they maybe more selective in the people they permit to stay in that area? So you do not have the thing cluttered up with your lower figures and then you can average from 5,000 up, instead of from one cent up.

Mr. Rivard: Selection is made before they go on the market.

Senator Prowse: In other words, the ones who are just sitting there unemployed and hopelessly hoping, they are scuttled out of it, so that to some extent our 75 per cent unemployed in this country might be considered as a self-inflicted hardship by those people because they could go out and make a good living, whereas some of them—I am not saying all of them, but some of them have just got an idea that they are going to be actors, but they never are.

Mr. Rivard: Our 1,550 members who are regular members, you must consider them before they became members.

Mr. Dugas: That is why even people known five or ten years earn terrible salaries and are not even sure to have the same salary a year after.

[*Translation*]

Senator Forsey: Do you think the Scandinavian countries are socialist, or what?

Mr. Dugas: Of course they are socialist.

Senator Forsey: Doesn't the situation differ between Sweden and Russia, for example?

Mr. Dugas: There is a difference with the Communist countries.

Senator Forsey: I refer to Senator Prowse's question. In Russia, for instance, they eliminate things, and it is not the same in Sweden is it?

Mr. Dugas: I did not mention Russia, because the system is different. In Russia, there is zero unemployment.

[*Text*]

If one wants to work there. That is another question.

Senator Davey: In raising your question with regard to socialism, I do not think socialism is a weapon. What I want to come to precisely is what government intervention you are recommending would be of assistance.

Mr. Rivard: My point is that we feel at this moment there is nothing, but we come to the authorities.

Senator Davey: All governments are moving in this direction.

Mr. Rivard: We are happy about this.

Mr. Dugas: We are happy about this. They did with the schools, with everything.

Mr. Rivard: We have the schools, we have the actors; we have not got the field to work in.

Senator Prowse: An artist is also dependent on the field he works in.

Senator Davey: I have two more questions only, Mr. Chairman. One is that you spoke several times about the problem of residing in Quebec and suffering from a double cultural shock—that is, with the American—and you said that because you have been a minority for so long in this country you certainly understand the problems that some of us have who are discovering that we are minorities on this continent. It seems to me that the double minority to which he belongs has made considerably more progress in dealing with the immediate majority, if you follow my language, than the minority to which I belong has made in dealing with its majority, and I am wondering what counsel and advice you could offer someone like me.

Mr. Dugas: Maybe to produce in a third language because, as far as we are concerned, French-Canadians have been lucky for that reason.

Mr. Rivard: And because we stuck to it.

Senator Davey: Not as lucky as I would imagine. I repeat what Senator Buckwold said. Certainly in the area of print, French Canadians enjoy a great advantage. But it is apparent from your presentation that when it

comes to broadcasting and television you have not enjoyed the same advantage, for the simple reasons of technology and the lack of legislation which you are now advocating.

Mr. Rivard: Absolutely.

Senator Davey: But you have no general advice?

Mr. Dugas: Well, the answer we got from the CBC was, "It has to come from higher up."

Mr. Rivard: They did not want to make a decision.

The Deputy Chairman: It is a question of policy.

Mr. Dugas: Yes.

Senator Davey: As long as you appreciate the cultural advantages you have by having a language other than English as your language vis-à-vis the Americans.

Mr. Rivard: I think we have more in common too with associations than both of us have with the Americans.

Senior Davey: Well, I say amen to that, and I won't even ask my last question.

[*Translation*]

Senator Lapointe: When you produce commercials in French, are they all done in Toronto, or are many made in Montreal?

Mr. Rivard: If the production is important, it is done in Toronto. Actually, if many people are involved, it is done in Toronto. As I mentioned earlier, it is done in Toronto in English first, and then the agent, the producer, sends for the leads, from Montreal only. To date, bit players have been from Toronto.

Senator Lapointe: When you produce in Montreal, are the commercials local ones that don't require much scenery, etc.?

Mr. Rivard: Most of the time, weather is considered too. Many producers shoot on location, even in the Southern States, to ensure good weather, which is more prevalent there.

Senator Lapointe: Are Montreal recording studios less well organized than Toronto ones?

Mr. Rivard: That's a good question! We have some well-organized, capable studios in Montreal, but the others, that are barely subsisting, because they do not get enough work to augment their equipment, could definitely get it if Montreal production were mandatory. They would enlarge and even be able to produce feature films. That is why I say that with imports, commercials made in Canada, and Quebec, would promote Canadian cinema.

Senator Lapointe: Is there an appreciable qualitative difference between local commercials made in Montreal and those made in Toronto and the States? A great difference?

Mr. Rivard: Montreal and Toronto are equal, and I feel that, overall, we are capable of producing as well as the Americans. One of the finest commercials I have ever seen was shown a year or so ago. It was made by CN and CP. In two minutes, the length of a song sung in French by Fernand Gignac and in English by another Canadian, Canadians could see the beauty of their country, from Halifax to Vancouver.

Senator Lapointe: Do you mean the commercial entitled "The Canadian Dream"?

Mr. Rivard: I know the French version started: "In the morning, in the spring, I have seen my country."

Senator Lapointe: It was made in Canada, in Toronto?

Mr. Rivard: Yes, in fact, everywhere, because it was shot across the country.

Senator Lapointe: Yes, but it was recorded in Toronto?

Mr. Rivard: Yes, and in Montreal, by a French-Canadian singer. There was a French equivalent of the English version.

Senator Lapointe: Thank you.

[*Text*]

Senator McElman: Do you find that the dubbings made in Toronto, physically by French-speaking actors, are based upon adaptation or translation more than would be the case in Montreal? Do you achieve a better quality of content in that sense, if it is dubbed in Montreal rather than in Toronto?

Mr. Rivard: Yes.

Senator McElman: Are they still in the old translation stage in many respects?

[*Translation*]

Mr. Rivard: The only mistakes discernable in commercials translated in Toronto, and we were just discussing this recently at the office, were obviously the result of an English-Canadian ad being translated by someone from France, because the terms were not at all adapted to Quebec, especially the accent.

The Vice Chairman: Do we French-speaking Canadians really have all the necessary talent and facilities to do commercials here?

Mr. Rivard: At present, the best example I can give is that many actors have grouped together and are not interested in joining us professionally, because, fortunately for them, they are enjoying a great deal of federal generosity, through the Local Initiative Plan and Opportunities for Youth. We now have many young actors who can, through these plans, earn an honest living, instead of vegetating in our union, trying to make a living as patent medicine men in areas where we have jurisdiction.

Senator Lapointe: You mean they produce films and things themselves?

Mr. Rivard: Theatrical works.

Senator Lapointe: No commercials?

Mr. Rivard: Theatre only. In concurrence with Senator Bourget that we have in Montreal, in Quebec, all the talent necessary to compete with any production on the market.

Mr. Dugas: We need recommendations. That is what we would like from you.

The Vice-Chairman: That is why we asked you here, to enlighten and inform us. Are there any other questions?

[*Text*]

We will return at approximately 2.30 p.m., in accordance with the agreement made last night in the Senate.

Senator Prowse: Why do we have to remain in the chamber until 2.30? Why did you give them 30 minutes?

The Deputy Chairman: You know what took place in the Senate last night, when we arrived at a certain compromise.

Senator Prowse: You got a good deal.

[*Translation*]

The Deputy Chairman: Mr. Rivard, Mr. Dugas, thank you very much. Good luck to you and your colleagues. And if there is a way to do something, you may be sure . . .

[*Text*]

The members of the committee are very appreciative and again thank you very much.

Mr. Rivard: Thank you for listening to us.

The committee adjourned.

The committee resumed at 2.30 p.m.

The Deputy Chairman: Honourable senators, we have, as our first witness, Mr. Peter Hunter, the President of McConnell Advertising Company Limited. On behalf of the members of the committee and myself I do extend this same welcome to the ACA organization. Welcome to our committee. Thank you for having accepted our invitation and having sent us your brief. I know the little time that you had to prepare that brief and the inconvenience it may have caused you, particularly during this season. We do appreciate it very much and thank you for it.

So, without further comment, I shall ask Mr. Hunter to read his brief, which is not too long; and then we shall go on to questions. Is that agreed?

Hon. Senators: Agreed.

Senator Buckwold: Mr. Chairman, before we start, and probably as the worst offender, I think, because of the lateness of the hour and other commitments which some members have at 5.30 p.m., if possible we should try to hear both briefs before that time. As I say, I am one of those who is probably guilty of unnecessarily extending the question period. Perhaps we should hold ourselves down to that time schedule.

The Deputy Chairman: I am in full agreement with that. Is it agreed?

Hon. Senators: Agreed.

Mr. Peter Hunter, President, McConnell Advertising Company Limited: Thank you, Mr. Chairman.

Mr. Chairman and honourable senators, I would like to express my appreciation for being invited to be here today nd having the opportunity to express some thoughts on this highly controversial subject. I must say that at the present time the environment of Senate committee hearings might be such that one would be a little nervous coming forward, but I think this is a friendly atmosphere . . .

The Deputy Chairman: It certainly is.

Mr. Hunter: . . . and I will proceed on that basis.

Senator Prowse: You will not get the going over that others are getting elsewhere!

Mr. Hunter: As the chairman has just said, I will read the brief. It is quite short. It is really a memorandum which I directed to the members of this committee, and it reads as follows:

It is well known that the Canadian production of advertising for use on radio and television has implications which are both cultural and economic.

It is generally accepted that advertising is a reflection of the society to which it is directed and therefore, as a corollary, it can be said that advertising produced in Canada would indeed be reflective of the lifestyles, habits, mores and practices of the people of this country. As such, it can be, and is, a contributor to the molding of a distinctive Canadian identity and a significant factor in the development of a culture for our nation.

The people who produce advertising—writers, artists, photographers, musicians, film makers and all the supporting skills—are unquestionably an important part of the core of the cultural community in any country. Canada is no exception. Therefore it behooves all of us who might have any influence on where these people live and work to direct considerable energy at retaining these talents in this country in order that they might contribute to our overall cultural development. Over the years, many of our leading writers—of books, et cetera—and fine' artists have evolved from the advertising community where they have effectively earned a good living while developing their artistic skills to a point where they could be self-supporting in the artistic community.

Without the creation and production of advertising materials in considerable volume domestically, many of these people would have departed for locations where greater financial opportunity existed.

The economic implications of increased Canadian production of advertising materials generally, and commercial content for radio and television in particular, would appear to be quite clear. The expansion of any industry in this country, or any other, provides a variety of opportunities. Referring specifically to the industry of producing commercial materials for radio and television, employment for talent—writers, art directors, producers, film directors, musicians, actors and actresses, et cetera—would be expanded thereby creating job openings for Canadians who might otherwise be attracted to foreign production centres where more work might be available. In addition to the talent of the sort just described, the supporting skills—(cameramen, sound engineers, film editors, stage crew personnel, commercial reproduction services, et cetera)—would be given greater work opportunities.

An enlarged industry of this kind is beneficial at all levels. Aside from increased employment, the tax revenues—personal income tax and corporate tax—generated for Canada from this source would be considerably greater than at the present time.

And the retention in Canada of the talent and supporting skills discussed above would allow for these people to become involved beyond the area of radio and television commercial production. Many would become a part of the arts community in the country while others would go into the film industry or the television and radio programme content field to mention only two. In other words, the expansion of the radio and television commercial production industry would have a proliferating effect far beyond its immediate circumstances.

In order to achieve a more dominant radio and television commercial production industry, I believe that a positive, as opposed to negative, approach must be adopted by Governments at various levels. By this I suggest that incentives should be created to encourage domestic production of radio and television commercials rather than penalties imposed for the importation of materials produced in foreign countries. Since 1968, when only 61 per cent of English language television commercials were produced domestically, we have seen a positive trend to the point where now close to 68 per cent is produced in Canada. With this clear indication that effort is being made by users of television commercials—advertisers—to do more production in this country, I believe that further definite encouragement would cause the figure to rise even more dramatically during the next five years and reach a realistic optimum level of 80 per cent by 1977.

At this point I would like to interject that it is unlikely that a 100 per cent level of production of radio and television commercials domestically could ever be achieved. Further, I respectfully submit that this is an unrealistic objective. There are many occasions when materials are being produced that it is necessary to do specific "location" shooting or have particular climatic conditions which are not available in this country at the time. Also, some commercials require an individual talent who is not available in this country and who isn't prepared to come here for the purpose of participating in the production of one or two commercials. In these instances it is quite reasonable to condone some, if not all, of the production in a foreign country. However, it could be suggested that the "shooting" be done where necessary but the post-production be done in Canada.

I have stated that I reject a negative approach to the encouragement of Canadian production of commercial materials. By this, I suggest that increased duties or excise taxes on imported commercials is not the right method. First, it removes much of the opportunity for the businessman to make his own viable business decisions. Indeed, from a marketing point of view, there may be occasions when an imported commercial is the correct and most economical solution to a communications problem.

Of more importance, however, is the fact that creating greater barriers at the border might cause reciprocal action on the part of other countries. This would be detrimental to the very industry we are trying to develop since considerable export of commercial materials, particularly television, is now taking place. Likely this business would be significantly diminished if other countries elected to increase the duties and excise taxes for commercials being imported by them.

The solution in my estimation, and as I have mentioned earlier, lies in incentives. This positive approach, which has been used successfully by government with a number of industries—(i.e., the film industry)—could and would, I believe, be most effective in this particular situation.

Specifically, I would propose that a company producing commercials for radio or television in Canada be allowed to claim 150 per cent of the cost of production of the commercial as a deductible expense when calculating its corporate taxes. Further, if a portion of a commercial is prepared in a foreign country but the remainder of the job is completed in Canada, the part done here should qualify for the 150 per cent deduction.

Following this procedure would indeed be strong encouragement for advertisers to produce their radio and television commercial requirements in Canada. I am confident the 80 per cent optimum and realistic objective would be achieved in the time frame I suggested without creating difficulty or penalty for anyone wishing to use imported material.

This formula would accomplish another important end. Many indigenous Canadian companies, which are in competition with Canadian subsidiaries of U.S. companies, have heretofore been penalised and put in an unfair competitive position because it was essential that they do their entire advertising production in Canada while their competitor was able to import materials at very low cost. The recommended formula would, to some extent, operate to relieve this burden.

A final point which I feel merits attention is the use of international advertising campaigns. Examples of note are: "Tiger In The Tank", "Things Go Better With Coke", "Merrill Lynch Is Bullish On America (Canada)". International business is a fact of life and international advertising campaigns are equally with us. A good con-

cept properly executed will be effective wherever it is run. From a marketing standpoint, the better the execution, the better the concept will work.

Therefore I submit that international advertising campaign concepts should not be discouraged but the execution in Canada of the concepts should be encouraged. For example, using the Coca-Cola theme of "Things Go Better With Coke", it would be better to show people enjoying the product in an obviously Canadian setting rather than a foreign setting with which the viewer of the commercial could not properly identify. This example, I believe, reflects both the cultural and economic implications of this whole subject. The commercial showing a Canadian setting with Canadians in it would make a contribution on the cultural side while the execution in Canada of the concept would obviously contribute economically.

The Deputy Chairman: Thank you very much, Mr. Hunter. We are now ready for questions. Senator Laird?

Senator Laird: In the past day, through witnesses, we have been trying to get as accurately as possible the extent of production of commercials in Canada which are exported. Now I notice your statement to that effect on page 5. Have you any figures or have you made any study, and can you be at all accurate about that?

Mr. Hunter: No, senator, I cannot; I cannot give you figures. I do not know that Glen Warren in Toronto, Champlain in Montreal, Canawest in Vancouver, the company with which I am associated, all have done considerable work in Canada for advertisers in the United States where there was no intent to use the commercials in this country at all. While I cannot give you any figures, I can assure you that the volume of business generated from that source is growing, and that is why I think the suggestion arises that if we close the border, so to speak, we might ultimately cut off our own noses to spite our own faces.

Senator Laird: Well, that is very interesting because we have had a variety of opinions. There have been some opinions to the effect that there was not much of this done, and other opinions to the opposite effect. Now you confirm what has been told us by one group of witnesses; that there is a substantial industry which is engaged in the production and export of commercials.

Mr. Hunter: For the simple reason that the Canadian producer, generally, can undercut the U.S. producer because we have lower overheads.

Senator Davey: Could I ask a supplementary question on that point? Is it not a case that frequently American actors are brought up here?

Mr. Hunter: I cannot speak for other companies, senator, but I do know that when we have done work here we have used Canadian talent and it is then a buy-out situation.

Senator Davey: If Senator Laird will just allow me to comment on the question I posed ACTRA this morning when they were here, they suggested that it was frequently. While conceding that the work Senator Laird suggests was done, and you confirm was done, ACTRA took the position much of this work was not very helpful; it employed American talent brought up especially.

Mr. Hunter: If you are speaking in terms of talent, only the people on camera would be, I suspect, although I am not aware. In cases that I know of directly the talent was not imported for on-camera work and, certainly, the cameraman and all the other production people utilized on the set and in the production process were Canadians.

Senator Davey: That is with the company with which you are associated?

Mr. Hunter: Yes. I would not like to make statements relating to other companies.

Senator Buckwold: Supplementary to this, too, and just for the record, I think your testimony is the opposite of what we have heard from the ACTRA people today, not only on the point raised by Senator Davey but even as to the quantity. From what I gather from public evidence received this morning, this so-called "bonanza" of Canadians producing for American television is regional and perhaps quite limited. They did not feel there was any great opportunity in this regard.

Mr. Hunter: I would suggest at this time it is not a bonanza, sir; that it is a business that is developing, and I think there is an opportunity to develop further. To what extent it would represent the business done by a Canadian production house I could not even suggest at this time, but I think it is a realistic segment of business. It should be sought out by the Canadian producers.

Senator Buckwold: I do not think anybody would suggest it should not be sought out. I think what was being said was that some of our witnesses have exaggerated the importance of this at the present time.

Senator Davey: Just one further supplementary question: What percentage of the total amount, Mr. Hunter, is done by Glen Warren?

Mr. Hunter: I could not begin to tell you.

Senator Davey: Is it more than half?

Mr. Hunter: They are probably the largest.

Senator Davey: Would they be more than half, for example?

Mr. Hunter: It might be in the order of a half, but it is only a guess.

Senator Davey: Could you tell us what percentage of your total volume of production business is for export?

Mr. Hunter: It is about 20 per cent right now.

Senator Laird: Isn't Baton in this act too?

Mr. Hunter: That is Glen Warren.

Senator Laird: It was their name that stuck in my mind, and not Glen Warren.

Mr. Hunter: Glen Warren is really the production facility, which is an extension of CFTO.

Senator Laird: We hear a lot of talk about the production of commercials in Canada being good for Canada culturally. I notice you were pretty specific somewhere in here. On page 7 you talk about showing the product in an obviously Canadian setting. I am not altogether sold on that proposition, because what is an obvious Canadian setting other than some recognizable building. For example, you see a lot of commercials taken with a mountain background. There are lots of mountains in the United States, lots of lakes, and so on. What did you have in mind there?

Mr. Hunter: Perhaps a Calgary Stampede setting where it could be tied in. There are a lot of things in Calgary that are identifiable to Canadians right across the country, which would be more appropriate for commercial use in this country rather than some rodeo in Texas or Arizona which is totally irrelevant to the Canadian market.

Canadian audiences can very quickly identify many American commercials and they mentally turn off. There is research to this effect, that a clearly identifiable imported commercial might not be as effective as the domestically created and produced commercial. That is a very hard-nosed marketing consideration and has nothing to do with culture or anything else. It is a question of what commercial is going to get the best results for the advertiser.

Senator Prowse: It does have something to do with culture.

Mr. Hunter: I guess it does, in a sense.

Senator Buckwold: You seem to be satisfied with the present trend of increase. In other words, in five years we have increased our percentage by about 7 per cent, according to the figures that have been submitted. Do you feel that is satisfactory?

Mr. Hunter: I think that it is an excellent indication that growth of the industry is taking place, and perhaps it could be accelerated a little. But if we could get up to a figure, as I suggested, of 80 per cent over the next few years, I think you will reach absorption in the market.

Senator Buckwold: Do you feel that the maximum possible, with reasonable restrictions, would be 80 per cent?

Mr. Hunter: I think so.

Senator Buckwold: I think all of us recognize—I, as the mover, in my motion, said this should be done to the maximum possible extent—that did not refer to manpower; it referred to climatic conditions and other things. In your opinion, then, 80 per cent is the maximum?

Mr. Hunter: It is only an opinion. I emphasize that. Take Air Canada and CP Air. For example, if they do destination advertising, which is a very high percentage of the advertising they do, a lot of their work is done outside the country in order to achieve the ends that they are looking for.

Senator Buckwold: A 20 per cent margin is a pretty significant part of the industry.

Mr. Hunter: I would not look at it as being that great. I think if we had 80 per cent—

Senator Buckwold: We are worried now about 33 per cent of those commercials made outside of Canada. Maybe we should not mave any concern at all. The 20 per cent is not much different. Surely, we would want to get a higher percentage made in Canada than 80 per cent as an optimum?

Mr. Hunter: Indeed, it would be desirable, but I do not think it is realistic.

Senator Buckwold: I would like a little more evidence on that "realistic" approach.

Mr. Hunter: I think if we could get an 80 per cent figure for Canadian industry in every category, we as Canadians would be quite delighted with that level. That would represent domination of all segments of business and commerce in this country.

Senator Buckwold: I do not think that is a really realistic answer, in the sense that you are comparing apples and oranges. We are looking at a specific industry with a specific impact on the Canadian public.

Mr. Hunter: You would have to make a very clear analysis of all the commercials and find out what has to be shot away from Canada and for what reasons. Also, there are many thoroughly justifiable cases where you cannot make any business sense out of not using a foreign-produced commercial. It might be animation, where there are no human-type characters in the commercial, but it was produced in Belgium because they are great animators in Belgium.

Senator Buckwold: You feel that would be 20 per cent of the market?

Mr. Hunter: It could be up to 20 per cent.

Senator Buckwold: You brought in a new dimension in your presentation. You are suggesting that, to reward advertisers for producing their TV commercials in Canada, they be allowed 150 per cent of their production costs as an income tax expense, or write-off, on that portion of the money that has been expended in Canada. I think this is a rather interesting observation. Could you enlarge on that, and, as part of your answer, indicate why you are opposed to increased tariffs on these commercials, a suggestion which we received from others in the industry, as a means of protecting the Canadian output?

Mr. Hunter: That is a multi-faceted question.

Senator Buckwold: No, there are just two parts to it.

Mr. Hunter: First, I believe in incentives rather than penalties. I think it is a much more effective means of achieving results in the long haul. Mr. Nixon at one time, in August of 1970, in his Phase 1 program, took certain measures that were penalties against people who exported to the U.S. But it was very clearly a *pro tem* situation. I do not think that kind of protecion is, in the long term, the kind of thing that will really build an industry in this country. I think if we can create a positive atmosphere—and I think it is the responsibility of government to create an atmosphere for living and working that is positive and conducive to industry and effort on the part of everybody involved—the incentive system would be much more effective than the penalty system.

Senator Buckwold: Is this being used in the film industry?

Mr. Hunter: In the film industry, through the Canadian Film Development Corporation, there are financial incentives or assistance made available for people producing films in this country, which is a much more positive way of growing than closing off the border.

Senator Buckwold: This tax incentive that you referred to would be for the benefit of the advertiser?

Mr. Hunter: He pays the bills. He is the man who pays for the commercials, so he obviously is the man who is going to make the decision where they are produced, and therefore he is the man who should reap the benefit of the system.

Senator Buckwold: I am sure this question will be asked of our advertisers, as to whether in fact this would be incentive enough for them to move in the direction that some of the committee would like to see. That is the end of my questions.

Senator Prowse: First, the figure that was suggested to us as the increased value of the work that would come to the Canadian production industry if all commercials were produced in Canada would be somewhere between $6 million and $8 million.

Mr. Hunter: I would not have thought it would be quite that large. There was a study that was released yesterday by the Ontario Select Committee on Cultural and Economic Nationalism, in which they suggest a figure of $12 million total, of which some $8 million is done domestically and $4 million imported.

Senator Prowse: Four million dollars imported and $12 million altogether.

Mr. Hunter: That is just another source of information.

Senator Prowse: If we are going to go to 80 per cent, it means that what we are talking about in the leftover is $2 million worth of production costs that could possibly be done outside the country. You have not done any estimate at all of what it might cost us to give us the kind of incentives where you are allowed 150 per cent...

Mr. Hunter: You mean the government?

Senator Prowse: Yes. If we allowed 150 per cent, we would have to allow 150 per cent for everybody. If we had $24 million—that is what was set down in Ontario...

Mr. Hunter: They said $12 million total.

Senator Prowse: If we had $12 million total, we would have to allow these people, for what is entirely done in Canada, $6 million credit for commercials done in Canada.

Mr. Hunter: They take 50 cents on the dollar for tax, so it is only $3 million.

Senator Prowse: So it costs us $3 million. When we start to give incentives we get a little worried because of something called Michelin Tires. You talk about their taking objection to us because of taxes and then you talk of incentives. In the Michelin Tire situation you had a very clear reaction from the American government because they retaliated against that. Surely here, if we started to hurt them, I am not sure that $8 million of work, or $4 million, or $2 million, is going to bring retaliation at any level. Do you think there is a chance?

Mr. Hunter: I do not think there would be retaliation on the basis of this kind of volume using the incentive system. I think there might be if there were a penalty system imposed at the border. I think the Canadian subsidiaries of U.S. companies, and their parent companies, would get quite incensed if they could not continue to do business as they have in the past, if they wanted to.

Senator Prowse: One of the problems you have there—and this has been brought up before—is the fact that the moment you get into changing the tax setup you get into GATT rounds and everything else. Possibly the incentive figure, which would be the net cost to treasury, would be about $3 million.

Mr. Hunter: No, I do not think that. I think on that side it is $3 million, but there is a lot of recovery to be made in there too. As additional business is done in Canada, there are corporate taxes to be paid by the producers, income tax to be paid by individuals who had individual work, and, as the industry expanded as a result of this, there would be a bigger pie from which to take a slice. Indeed, with the incentive system, I think you might see the Canadian subsidiaries of U.S. companies going to their parent companies and saying, "Look, we can produce that pool of commercials you were thinking of doing for $150,000 or $200,000 in Hollywood for considerably less in Canada. Not only that, we will get a write-off." If we look at it in the consolidated balance sheet or profit and loss statement of the companies, the corporation, overall, is ahead. So it could then be a real inducement for more production in Canada for commercial export to the U.S.

Senator Buckwold: The DISC program in reverse.

Mr. Hunter: I suppose, yes.

Senator Buckwold: May I ask a supplementary? I should have asked this earlier. With respect to the in-

centives for Canadian-produced television commercials, we are looking at figures, basically, of national concerns. Would this also apply to the local store owner who wanted to make a television commercial at home for use before the local audience at a cost of, perhaps, $500? How would you differentiate in that instance? Would he, too, not be entitled to the 50 per cent?

Mr. Hunter: I do not think you can have two sets of laws.

Senator Buckwold: So that everyone who makes radio and television commercials would be entitled to the 50 per cent?

Mr. Hunter: They are contributing to the industry, and I think they should be entitled.

Senator Buckwold: So the figure we are looking at is going to be much higher than the figure you have mentioned. That is the point I wanted to bring to your attention.

Mr. Hunter: Yes. However, again, I think you can see considerable production done in Canada for the type of advertising you are speaking of, because there may be some savings as our industry expands.

Senator Prowse: We had something along those lines previously, I believe. It may still be in effect. Was there not a 125 per cent write-off for social development some years back?

Mr. Hunter: This is not a unique concept at all. It has been used in many cases and in many ways in the past.

Senator Prowse: You think that if this kind of thing were done, this would bring us up to what realistic market forces would determine, and the only thing which would have to be brought in from outside the country would be those things which are not available here—things like lemons, which we bring in anyway?

Mr. Hunter: I could absolutely guarantee that every advertiser, Canadian or U.S. subsidiary, with which my company deals would give a good deal more thought to this subject than has been the case in the past, and I am quite confident that it would have the desired effect. I think you would see the growth accelerate from what it has been. I have used the figure of 80 per cent. It has been questioned, but, as I said before, it is an opinion. It may very well be 85 per cent; it could be 90 per cent, in the fullness of time. I said 80 per cent by 1977. I think that may be an optimum or a maximum figure, but it is purely my own opinion.

Senator Prowse: You can beat the American production figures by about 30 per cent by doing the production in Canada?

Mr. Hunter: I do not think you can generalize, really.

Senator Prowse: Well, 20 to 30 per cent?

Mr. Hunter: Well, 20 to 30 per cent would probably be realistic.

Senator Prowse: We had illustrations yesterday where this has succeeded with some people where they have tried to sell them in the States, but others prefer to have an American-produced commercial for an American audience, even with the higher cost.

Mr. Hunter: I think some of the arguments we use for Canadian production would be used by the Americans for U.S. production. This is not a one-sided story. There will be occasions when Canada would not be the right place for an American company to come and get its commercial work done, perhaps because of location, climate, or whatever. I do not think that we have a good, clean shot at all of the production business being done in the U.S., but I think there is enough there to allow us, over the next five or ten years, to double or treble the size of our industry in this country with some pretty aggressive salesmanship and a demonstration of ability to produce quality commercials, and I think that ability exists in this country.

Senator Prowse: It has been suggested to us that the amount we produce for the U.S. market now has a ball park value of $6 million a year. Just projecting your own experience, do you think that that figure might possibly be correct, or could you go that far?

Mr. Hunter: I do not have the figures, Senator Prowse. I do know that it is a growing business. I have talked to producers of commercials and they all look at that as an important part of their business now, whereas a year or so ago it was virtually non-existent. If it is $6 million, then it represents 50 per cent of the domestic business and creates an industry of $18 million, using the Ontario figures. If that is the case, it is pretty important to everyone who is involved in the industry here.

Senator Prowse: Just to tie it down so I and everyone else is clear on this, you are suggesting that 80 per cent of the market is a realistic medium because you figure that in 20 per cent of the cases it is going to be desirable to have out-of-Canada location shots or special personages, or some other...

Mr. Hunter: Climate, location, personages, or just the fact that it is ridiculous to duplicate a particular commercial because it would be absolutely no different if done here than if done in the U.S. Let's say it is a truck that is identical in both markets and it is shot in a showroom situation with nothing beyond that. There is nobody on camera; it is a voice-over situation. It would be feather-bedding to do it twice.

Senator Prowse: Do you think they sell many neat-looking little sub-compact cars sitting on a rock in the ocean on the Prairies? Do you think they sell many by showing that picture on television?

Mr. Hunter: I do not think they sell very many in the Prairies by using a commercial such as that any more than they sold a lot of compact cars when they ran a commercial on one of the Canadian networks adjacent to a CFL football game saying that this particular car sold well in Long Island, Florida, Texas, and so forth.

I think the people would just reject that type of commercial out of hand. It was bad strategy on the part of the advertiser. I think there is a good deal of business judgment involved in this as well as the cultural and economic implications within the industry.

Senator Prowse: It would be your feeling, then, that the general rule, in good advertising, to get effective identification of your product, the product should be shown in a set of locations or circumstances with which the customer can identify?

Mr. Hunter: Unquestionably. I think everyone in the advertising industry would agree with that.

Senator Prowse: So that we have this going for us and we can achieve that providing everybody works at it with good will?

Mr. Hunter: And that is a marketing situation.

Senator Prowse: Yes.

Senator Davey: Mr. Chairman, I should like to begin by thanking Mr. Hunter for coming, and by commenting favourably and congratulating him on his statement which appears in the current issue of *Marketing*, which I have referred to several times at these hearings. *Marketing*, for those who do not know, is one, if not *the* advertising trade paper in Canada.

I have referred several times, Mr. Hunter, to the fact that the ICA refused to come before this committee, which I feel is a cop-out, particularly inasmuch as J. Walter Thompson, when they were here yesterday, referred to the reference in their agreement with ICA to the ACTRA clause which states that where possible an attempt should be made to use Canadian talent. It seems to me that if ICA member agencies subscribe to that, that rather puts them on side with the general thrust of this committee.

For the benefit of my colleagues and, perhaps, yourself, although I am sure you have seen *Marketing*, Mr. Hunter is quoted as saying, and I quote:

> "They...

Referring to ICA.

> ...at least have statistics because they have done a study of the subject, and they should make their knowledge in this area available to the committee... In fact, they have the responsibility to do that...." Hunter also suggested Reeve, the President of ICA, was assuming an awful lot in thinking that McConnell and JWT would cover the subject for the major agencies.

I think that is a very commendable position. Is there anything you want to say about that? I am not asking you a question about it. I just wanted to begin my questioning by saying that I applaud that position. Is there anything you want to add to it?

Mr. Hunter: I do not believe so.

Senator Davey: Fine. I should like to turn immediately to this figure of 80 per cent. I share the wonderment of some of my colleagues with respect to this figure. I think 80 per cent is too low a figure for what we are trying to achieve. You give two examples. You say some commercials require individual talent which is not available in this country and who isn't prepared to come here. Why would he not be prepared to come here?

Mr. Hunter: Because his commitments, wherever he is, do not allow him to come here.

Senator Davey: Could you give the committee an example of that? What did you have in mind when you said that?

Mr. Hunter: Well, who is a highly popular star today who may be committed to making a film in Los Angeles and is not available?

Senator Prowse: Lorne Greene.

Mr. Hunter: Well, he is one. That kind of person who cannot get away, but he can get a day off to come and shoot a couple of commercials if you use his studio.

Senator Davey: Who would be an example? Is Lorne Greene who you had in mind?

Mr. Hunter: I know a specific case, but it is not current. We wanted to use Jack Benny and he agreed, but he insisted that we would have to come to where he was because he did not have the time due to his commitments to take the best part of a week to come up here. He said that if we could schedule it into a day in a studio in Los Angeles, he would be willing. That is a specific case.

Senator Graham: And did you do it?

Mr. Hunter: No, as it turned out, we did not, but it was not for that reason.

Senator Davey: In that case would the Canadian company take a Canadian production crew down there to make the commercial, or would it go to the States and use an American production crew to do that Jack Benny commercial?

Mr. Hunter: Mr. Siren would probably be more able to comment on this than I, but, generally speaking, I think they would use a crew down there. They might take their own director or producer, but they would use an American production crew. That is why I suggest that if a commercial is shot outside of the country, any Canadian involvement in it should become part of the deductible expense. Were that the case, I think you would see more Canadian crews, supporting actors and actresses moving to the particular site to do the job.

Senator Davey: You talk about commercials requiring individual talent. The other area you talk about in arriving at the 80 per cent is the materials being produced necessitate specific location shooting. Senator Laird will be surprised to know that I can conceive of that

circumstance. I am not 101 per cent, but I just cannot believe that those two examples you have given, location shooting and individual challenge, add up to 20 per cent.

Mr. Hunter: I may be low. As I said, it is an opinion; it was a guesstimate on my part. I think climate plays a bigger role than you might generally conceive. I can give you an example of that. We were doing a pool of commercials for electric lawnmowers and this particular advertiser was doing his planning in the late fall which meant that the time for shooting the commercials was in January and February. We just do not have much grass around here at that time of the year, so off we went and we shot the commercials outside the country. We had no alternative but to do that.

Senator Davey: I can conceive of the fact that there are such circumstances, but I would urge you to re-think the figure of 20 per cent. It leaves far too much tolerance. With respect to magazine legislation, it is 5 per cent. I think we allow too much tolerance in these areas. If we seriously want to accelerate the amount of advertising production which is done in Canada, that 80 per cent figure is far too low. I am wondering whether you would not re-think your position on that.

Mr. Hunter: I would be quite prepared to re-think my position. As I say, it is an opinion. I received the invitation to be here just the other day and there was not sufficient time to do a lot of in-depth study into some of these areas. It was a judgment call.

Senator Davey: That is fair enough.

Mr. Hunter: What about 17.65 per cent?

Senator Davey: Well, I know what 17.65 means.

Senator Buckwold: What is that, the Liberal vote in the last election?

Senator Davey: In Alberta.

I should like now to turn to the question of incentives. You suggest that with further definite encouragement in the next five years we could reach a realistic optimum level of 80 per cent. What do you think that level will be in the next five years without any legislation or without any definite encouragement? You made the point that in the last six years it has increased just under 7 per cent.

Mr. Hunter: It has not been a steady growth.

Senator Davey: Yes, it went way off in 1970.

Mr. Hunter: That is right.

Senator Davey: But, in round figures, it has increased 7 per cent in the last six years. What do you think the increase will be in the next five years without legislation and without any definite encouragement?

Mr. Hunter: I think we have probably hit a point of diminishing return.

Senator Davey: You think we are beginning to hit that?

Mr. Hunter: Yes.

Senator Davey: I wonder if I could get to this question of your belief in rewards rather than penalties. Incidentally, we have heard a lot—I am just asking you this in passing—in the last few days about the famous commercial, "Merrill Lynch is bullish on America-Canada." That commercial was brought into the country, as we have been told, for $68.40. Do you think that that is a satisfactory situation?

Mr. Hunter: No, I do not.

Senator Davey: Surely you would not suggest that there would have to be an incentive for the advertising agency responsible not...

Mr. Hunter: I think that the example you cite cost something in the order of $90,000 to produce in the U.S.

Senator Prowse: In Mexico.

Mr. Hunter: Well, wherever it was produced. It was produced outside of Canada. The $68 brought it across the border. It needed a new sound track, and so forth. I am not sure what particular work was done to it. However, there was Canadian content in it, so it is beyond the $64 or the $68, or whatever the figure is.

Senator Davey: But the film was brought into Canada for $68.40.

Mr. Hunter: There were no people in that commercial, just bulls.

Senator Prowse: Bulls with long horns, which we do not have in Canada.

Mr. Hunter: You are a westerner.

Senator Prowse: We do not have them.

Senator Davey: Surely, you do not think it is a healthy situation when an agency can bring into Canada a commercial that costs $90,000 somewhere else for $64.80? I agree other processes must be carried out before it is used, but surely incentive would not deal with that?

Mr. Hunter: I certainly am no authority on duty and excise, but perhaps the structure of the rating system used needs review. I do not think we should build a prohibitive barrier at the border for the importation of material when there is a valid reason to bring it in.

Senator Davey: Before we leave Merrill Lynch and I turn to my final questions, you referred to international advertising campaigns: "Put a Tiger in your Tank"; "Things Go Better With Coke;" and "Merrill Lynch is Bullish on America". Surely, in that context "international" is simply a euphemism for "American"? You call them international, but I call them American campaigns. Surely they import into Canada a whole foreign approach and lifestyle, a whole approach to the great American way of living.

Mr. Hunter: I believe that "Tiger in the Tank" was conceived in either Britain or South America. It was not an American, but an English concept.

Senator Davey: It was by an American agency in London.

Mr. Hunter: I do not know.

Senator Davey: I am saying it was by an American agency in England. I personally happen not to identify the Coca-Cola subculture with Canadian identity. I drink Coca-Cola and consider it to be a fine drink, but I bridle at the suggestion that the Coca-Cola subculture is in any way identified with the Canadian life style. Simply because the subject is sipping Coke in the Rockies does not make it any more acceptable.

Senator Laird: He should mix it with "screech."

Mr. Hunter: Heinkel, the detergent manufacturers in Europe, are planning to enter the North American market. It will be an international company originating in Europe. Their campaigns, I am sure, will emanate from the source country and will not be created here.

Senator Buckwold: Do you not feel that they will hire an American agency to take over the campaign?

Mr. Hunter: No, they spend approximately $80 million-worth on advertising in Europe.

Senator Buckwold: With no advice from those who are expert in the market here?

Mr. Hunter: They have not entered the market here yet.

Senator Buckwold: But you say they plan to do so.

Mr. Hunter: They will hire agencies in Canada, the United States and whatever country they go into. They might indeed create a concept in Germany which will be utilized worldwide, but executed in the markets in which it is run. In my opinion international companies are a fact of life and will not go away. International advertising is also a fact of life. I believe, however, that advertising can be made much more acceptable in the market place in which it will appear if it is executed there and reflects to some extent the life and habits of the population of the country in which it runs.

Senator Davey: I am not sure I understood your answer to the question with respect to your reference on page 5 to the positive approach which has been used successfully by government with a number of industries. You mention specifically the film industry. Did you have in mind the Canadian Film Development Corporation?

Mr. Hunter: That is right.

Senator Davey: Specifically?

Mr. Hunter: That is right.

Senator Davey: What did you think of the recommendations of the Ontario commission which studied the film industry in Ontario?

Mr. Hunter: I am not familiar with that.

Senator Davey: This was a commission headed by John Basset, Junior. Some of the recommendations were, in effect, that movie theatres in Ontario should be compelled for a prescribed amount of time each year or each month to show Canadian film.

Mr. Hunter: I am not familiar with the report at all, senator, so I cannot comment on it.

Senator Davey: I was curious to know, as *Reader's Digest* has entered the film production industry with a musical entitled, "Tom Sawyer", if that would be considered a Canadian film. I would hope not, but that is off subject. Two points trouble me with respect to your 150 per cent suggestion. I will put them each to you: One, this is a question to which I do not know the answer and I would like to have your comment; do you know of any country in the world in which the government subsidizes the advertising industry?

Mr. Hunter: Yes, there is government support in Australia.

Senator Davey: How do they do that?

Senator Prowse: They will not allow others in.

Mr. Hunter: But that is certainly the case in Australia.

Senator Prowse: Is it also subsidization?

Mr. Siren: It is entirely indigenous.

Senator Davey: That is not a subsidy, but a restriction.

Mr. Hunter: No, the producers of the commercial collect back almost the full cost of it from the government. I can obtain that information and forward it to you.

Senator Davey: As a person interested in political affairs and knowing that you share that interest I simply question the wisdom of a government, whether provincial or federal, going to the people with a program of subsidizing the advertising industry. I would be worried about the popular response, but maybe you would not.

Mr. Hunter: You used the word "subsidy." I do not think it is that so much as an incentive system, as I have said. I suppose it is a matter of semantics.

Senator McElman: If you wish to be positive, do not call a hare a rabbit, or vice versa. It is a subsidy.

Senator Davey: As you know, you and I agree on so many of these matters. I am a little distressed that you consider it necessary to reward people for being good Canadians. Surely we will not really develop any sense of ourselves in this country if we must subsidize people, particularly the business community, for behaving as good Canadians?

Mr. Hunter: I have two comments, which I would not say are answers to your observations. One is that probably the area which we are considering most directly is that of subsidization of non-Canadian companies. Therefore that takes a little out of the context referred to by you. Secondly, inn my opinion it is the type of

incentive that will encourage more production for export by companies who intend to use those commercials in other lands. I therefore consider it to be a real incentive in that case for those who are not Canadians to use the Canadian source of supply.

Senator Prowse: Who gets the 50 per cent, the advertiser or the producer?

Mr. Hunter: The advertiser.

Senator Graham: What effect would this have on the cost of production? Would there be a tendency to drive it up as a result of this write-off which would be available?

Mr. Hunter: No, I do not believe it would drive the cost of production up in the sense that producers would charge more. Is that your point?

Senator Graham: My concern is that the producer and the advertiser might not be as dollar-conscious in production as they would be under the present circumstances.

Mr. Hunter: Having dealt with advertisers for some time, I know they are very dollar-conscious in almost every circumstance I can visualize. Just because there is an advantage in acting in a certain way is not sufficient. They must see it reflected in the bottom line and not dissipated throughout the system.

Senator Prowse: But would it not be true then that when you spend a dollar you receive a dollar-and-a-half in return?

Mr. Hunter: No, they do not receive a dollar-and-a-half in return, they still must pay 50 per cent.

Senator Prowse: But they end up ahead of the game.

Mr. Hunter: But so does everyone in the system. We are discussing a miniscule amount of money really. If everyone jumped their price 10 per cent, it is $1.2 million, approximately, nationally. I do not believe any one will do it though. Advertisers want their money spent in media in which the audience can see the message. They wish to produce a good message, unquestionably, but they want to invest any extra dollars they have into the media in which they will receive the most exposure for that message. That is where it will do the most good, sell the most product and make much more money, than a little extra write-off.

Senator Prowse: In other words, they do a cost benefit of their expenditures.

Mr. Hunter: That is right.

Senator Prowse: And they choose their media on that basis.

Mr. Hunter: That is right; the media is chosen on an efficiency basis.

Senator Davey: Did I understand you to say in response to my last question, in which we were discussing my concern at having to reward people for acting as good Canadian citizens, that this was because so many of them are international companies?

Mr. Hunter: That is right, because all the importation is done by those companies.

Senator Davey: So would you not agree with me that the problem we are considering is really part of a much broader problem?

Mr. Hunter: Of internationalism?

Senator Davey: Well, sure?

Mr. Hunter: Yes, I believe that is unquestionably true.

Senator Prowse: Let us consider it from a very practical point of view: Suppose you were the advertising manager for the NDP...

Mr. Hunter: Heaven forbid!

Senator Prowse: And the government in power came along with a deal which would return to American companies $1½ dollars benefit for the expenditure of $1 in Canada...

Senator Forsey: The advertising corporate rip-off.

Mr. Hunter: At the same time you would be creating more jobs.

Senator Prowse: Sure, that is the way it might be interpreted by Mr. Lewis, although that is not the way we would interpret it. Anyway, I think it is a good idea.

The Deputy Chairman: Mr. Hunter, did you appear as a witness before the Ontario Select Committee at some time in January of this year?

Mr. Hunter: No, about a year ago now.

The Deputy Chairman: "P. W. Hunter, President, McConnell Advertising Company Limited"?

Mr. Hunter: Oh, yes; we returned a second time.

The Deputy Chairman: I have a copy of the minutes of the committee and will quote to you from page 2206:

> First, we are representatives of wholly-owned Canadian advertising agencies and have a deep concern for the erosion of the business from Canadian hands to foreign owners.

Later on, at page 2207, you say:

> We think, as we said in paragraph 4, that if the present trend continues that the control of the advertising agency business in Canada will indeed be in the hands of foreign interests and we strongly feel that this is not a good thing for Canada or for the Province of Ontario.
>
> Paragraph 5 points out that 37 per cent of the advertising agency business in 1970 flowed through the U.S.-owned or affiliated advertising agencies and

that the growth rate was in the area of 1 per cent per annum.

A little further on you continue:

1 per cent per annum, so at this point of time...

...which was probably last year.

...it would be very close to 40 per cent if these figures held true.

Then, moving on two or three sentences, speaking about Appendix B, you continue:

At the top of the right-hand column, the year 1969 should be inserted there. That was omitted. In 1959 only three of the advertising agencies in the top 15 operating in Canada were U.S. controlled agencies. By 1969...

That is ten years later.

...seven of the agencies had fallen to foreign interests and since 1969 one or two more have gone that way.

In my opinion, if there is a trend that there is an erosion and that Canadian-owned advertising agencies are bought by foreign-owned agencies, there is a danger that more work will be done outside Canada. However, in your brief today you did not express concern in that regard, which in my opinion is of great importance because if there are more foreign-owned companies buying Canadian-owned companies, then there will be more danger that the work will be done outside our country. Has the situation changed since you made that statement, from that date until today?

Mr. Hunter: Mr. Chairman, I really do not think the two subjects tie together. The ownership of the Canadian agencies is one subject and does not relate to the content, the domestic content, in the production of material. To me they are quite separate subjects. The quotes that you read are accurate. Those are the things I said, although some of the figures have been questioned by the other people, but I am quite confident that Mr. Robertson of J. Walter Thompson, who was here yesterday, would produce the commercial where he felt it could best be done. He would not try to influence his client to import a commercial if he thought it could better be produced here, nor would he try to produce it here if he thought the off-shore production was a better way of going.

The Deputy Chairman: Will you not agree with me that, if there are more foreign-owned companies or if foreign companies buy more Canadian-owned companies, there will be more danger that the work or commercial production will be done outside this country?

Mr. Hunter: I would agree with you, sir.

The Deputy Chairman: On account of the connection between the two, and if we want to make the aim or the goal of the motion that has been moved by Senator Buckwold, I think this has some importance.

Mr. Hunter: Mr. Chairman, I would agree with you if we were talking about the advertiser, the company that actually contributes the funding for the advertising. If a company was taken over by a U.S. company, or a foreign-owned company of any kind, the influence could indeed truly exist for that company in Canada to do things other than the way it has done them in the past. In the case of advertising agencies, I do not think the parent company of the agency too often influences the decision as to where the production will be done. I do not think they get down to that level and, also, I genuinely believe that the decision is made almost on every occasion by the advertiser, although the agency can influence, to a certain extent, it will recommend where the production be done, but I do not think the ownership of the agency is critical to the production of commercials in Canada.

The Deputy Chairman: Thank you. In any event, I still feel there is a little danger, and I quoted this to you because I thought it had some importance related to the interests of Canadians. I think we have read in some of the briefs that if the foreign-owned companies are taking over Canadian-owned companies they will be more of a danger and that the Canadians would lose some of their work.

Mr. Hunter: Senator Bourget, I might suggest, since those statements were made there has been a certain reversal of that trend.

The Deputy Chairman: That is the reason why I did ask you.

Mr. Hunter: Baker, Lovick, BVDO was to a large extent owned by BVDO in the U.S. The Baker, Lovick people have redeemed their shares and now I am told it is a fully owned Canadian company. In our own case we have acquired the Canadian subsidiary of a U.S. advertising agency, merged into our operations, reducing by one the number of American companies operating in Canada. Those are two examples. I am not aware of any case since that time where a Canadian agency has been taken over or bought into by a U.S. agency.

The Deputy Chairman: Thank you.

Senator McElman: I would just like to ask the witness to refer back to that period when the CRTC let it be known that Canadian content regulations would be brought into effect in Canada in a given period of time.

Mr. Hunter: That is the program content you are referring to?

Senator McElman: That is correct, and at that point in time the CAB and its member broadcast stations across the country raised an uproar that could be heard from coast to coast and editorialized in a very open fashion that this was going to bankrupt them, that it was false nationalism, and so on. We all know the result which has been good for Canada. I think we all agree. What would you think would have been the result, Mr. Hunter, if the Canadian government instead of taking

that road, had said, "We will offer you the sort of 50 per cent subsidy that Mr. Hunter is talking about"?

Mr. Hunter: It would have eliminated the arguments that came forward that their cost would go up so dramatically by having to go into production, whereas in the past they have beeen purchasing shows from other countries, and you would have got, first of all, a positive response.

Senator McElman: Did they not get a positive response?

Mr. Hunter: I think it is not as simple as that. The economy has been outstanding. You cannot buy time, prime time, certainly on television today, without a lot of advance planning and, as fate worked out, the revenues for these stations have been higher than they have ever been during this period when they had to incur extra expenses. Had they been going through a time when the economy was down, I think many of the broadcasters would have really been in deep trouble and their fears would have been borne out.

Senator McElman: So you think it would have been a better result?

Mr. Hunter: I think it would have been probably a better result, and I think you probably would have seen the percentages not just break the mark but maybe go somewhat beyond, or considerably beyond, the figures that have been set by the CRTC. What is it—50 or 60 per cent right now?

Senator McElman: So that is the benefit of the profit picture of stations. What about the benefit to the artistic talent in Canada in production and so on? Do you think it would have run right through the piece?

Mr. Hunter: It has to be passed along to a certain extent.

Senator McElman: Then, in effect, you think that the subsidy approach is better than the regulatory approach?

Mr. Hunter: I think in the case of commercial content particularly, yes, because I do not think that a businessman's decision should be made for him by someone else, I think he loses his flexibility, and I think that is unfair of government to intrude to that extent, but this way he can make his decisions. He will not be penalized if he decides to go one route as opposed to another.

Senator McElman: Unfair of government, you say? Is it fair of government to pay such a subsidy when actually, in effect, it is positive in the approach perhaps of the advertising business, but how positive is it to the taxpayer whose pocket is being reached into to pay the subsidy?

Mr. Hunter: I think you would find possibly not in year one or year two but by years three, four and five, that the revenues generated for the production industry would be greater than the cost of the subsidy because the business would expand.

Senator McElman: Thank you, Mr. Chairman.

Senator Prowse: The benefit would exceed it over a time?

The Deputy Chairman: Are there any more questions? If not, thank you very much, Mr. Hunter.

Mr. Hunter: Thank you very much, Mr. Chairman.

Senator Prowse: May I ask one question before you go, which has just occurred to me? What you said last, would it perhaps be an idea if we slated a target date for when these things would be desired to be put up to, say, for the next three or five years or ten months, or whatever it would be, that this kind of benefit would apply?

Mr. Hunter: The incentive or the subsidy, whatever you want to call it, would be in existence for a certain number of years? That might be a reasonable thing to do.

Senator Prowse: And if it had not worked by that time something else would happen?

Mr. Hunter: That is right. I think anything that proves it is not working would be changed anyhow. I think if it was in a time frame that might not be a bad thing.

Senator Prowse: It would allow planning that way.

The Deputy Chairman: The next witness will be the Association of Canadian Advertisers Incorporated.

Honourable senators, on your behalf I would like to welcome the officers of the Association of Canadian Advertisers. To my right I have Mr. Pengelly, whom I would ask to introduce the members of his delegation, after which he will make an introduction; and then we will have some other comments from some of the members of the delegation.

Mr. A. Z. Pengelly, Immediate Past Chairman, Association of Canadian Advertisers Incorporated, and Director, Warner-Lambert Canada Limited: Thank you, Mr. Chairman.

Gentlemen, may I first introduce our group. My name is Pengelly. I am past chairman of the Association of Canadian Advertisers and have been associated with advertising for some 27 years. I am also an officer in a company which is one of the largest television advertisers in Canada. To my immediate right, and your left, is a senior vice-chairman of our association, Jack Dampsy. To his immediate right is a co-chairman of the joint broadcast committee, Henry Ross. To his right is the current chairman of our association, the senior elected head, Alf Hodges—A. J. Hodges. To his right is Mr. Tom Blakely, the president and senior salaried officer of our association. Once again, to his right, is the senior vice-chairman of the association, John Foss. Nex to him is the other co-chairman of the joint broadcast committee, Mr. Hopkins.

The Deputy Chairman: Thank you. You may now proceed.

Mr. Pengelly: Each of you has a copy of our brief. I would like to begin with a few remarks. I am doing so on the assumption that you have, at least quickly, had time to read the brief.

The Association of Canadian Advertisers wishes to thank the committee for this opportunity of appearing before you today. As requested by your deputy chairman, copies of our brief have been sent forward and are in your hands. We particularly welcome discussion of any points raised in the brief or any other consideration bearing on this question which you would like to explore, since we recognize, and I know you recognize, that the time for its preparation has been limited.

The question itself is a complex one. It is subject neither to easy definition and, we suggest, easy answer. In the first part of our brief we have tried to examine what we believe to be the basic concerns which led to your consideration of this question, and some of the facts and possible consequences which could arise from some of the courses of action which could be taken. We wish to be constructively useful in providing a viewpoint that could be helpful to each of you in arriving at an answer to Senator Buckwold's question, and indeed the reason for all of our appearances here today.

We would like to compliment ACTRA, and in particular Messrs. Parrish and Siren, for their brief to the committee this morning, and for their efforts in support of Canadian talent. Because of the fine working relations between ACTRA and ourselves, which he mentioned this morning, and to which we agree, we have made real progress over the past few years, and we suggest the current agreement, which some of you may have seen, bears witness to this fact.

We obviously have differences of opinion We do not, for instance, believe that regulation will achieve what ACTRA is hopeful that it would. The negatives connected with regulations, we suggest, may well outweigh the pluses. We regret that time has limited our contribution for a fuller examination of the many issues involved. We believe, for instance, that views outside those you have heard, or will hear in the next couple of days, may well be considered.

Before answering any of your questions, I would like to make a few comments relevant to some of the points that have been discussed this week. These are important, as the position of the advertiser is in question in our interpretation of this information.

I should like to say first that the advertiser must be concerned with the development of the television commercial he is using. In particular, the concern is for two factors that we are now faced with, and a factor that we may be faced with in the future. The two factors that we are now faced with are: one, the cost of television commercial production has gone up something in the order of 75 per cent over the past five years.

Senator Buckwold: Would you repeat that?

Mr. Pengelly: The cost of television commercial production has gone up something in the order of 75 per cent over the past five years.

Senator Laird: In Canada?

Mr. Pengelly: Correct. The second point: largely because of the increased useage of the thirty-second commercial unit, the very effectiveness of the commercials that we do use, we believe, are diminishing. For the future, in the reduction of the use of non-Canadian-poduced commercials, we believe that the advertiser, in order to control costs, would lengthen the period of useage of any one commercial that he might produce. He would not necessarily move to the same number of commercials that he had been using in the past. So, in effect, he would not spend more money.

Another factor that I would like to suggest is that there was reference this morning to the subject of the production of IDs produced in the United States for use in radio. I think it is important that you recognize that these IDs are not the product or the work of the advertiser. The ones that we referred to are for the use of the radio station. As a general rule, the percentage of commercials produced for radio for national advertisers is actually, we believe, higher than the percentage for the production of television commercials.

I would like my associate, Henry Ross, to add to these thoughts some points that are relevant to our survey which is appendix C in the brief in front of you. He will examine the survey itself. He would like to make some points relevant to talent and the production industry, and the inter-action or the elements that can affect our decision to use television or, in fact, other media.

Mr. Henry Ross, Co-Chairman, Joint Broadcast Committee, ACA: Mr. Chairman and gentlemen, thank you for the opportunity of discussing this broad, complex subject. Let me put myself into perspective here, so that you can somehow get the idea of the source of whatever facts or input I can provide so that hopefully it will contribute to your ability to make a sound decision.

Mr. Parrish this morning introduced himself as a seasoned performer. I guess I might introduce myself as just an old advertising practitioner. I have been involved in the creation and production of television commercials since the inception of the television industry in Canada.

Senator Buckwold: Do you go around with a bodyguard?

Mr. Ross: There seemed to be some need for clarification of Appendix A. I shall do my best to clarify it for you, if I can. Firstly, the footnotes are somewhat explanatory, but let me, too, try to add to the meaning of those. Most commercials produced in Canada, which are expressed here in terms of 61 per cent in 1968 and 67.8 per cent in 1972 are, in fact, entirely produced in Canada; totally produced in Canada and by Canadians. I think there was some question this morning as to whether this did, in fact, mean that they were totally Canadian. They are.

Senator Buckwold: Does that mean written as well?

Mr. Ross: Yes, written and produced. Now, who submitted these figures and facts? They were submitted by 24 agencies. These agencies place approximately 75 per cent of all the national advertising in Canada. However, it is conceivable, and I do believe it is so, that they probably represent even a greater percentage of the nationally-placed television advertising commercials. That is the source. The people who submitted this information in the agencies were those in the agencies most qualified to identify the commercials. These would be traffic people, who are the people who order the times, place the commercials, code them and keep records of them.

We must also remember, as stated in the sub-notes, that this percentage does not include another considerable portion of totally-produced Canadian commercials, those being local and regional commercials. Nor does this figure include French language commercials, which are totally Canadian. Those are covered under a separate head. So it is a somewhat higher percentage again. I am not suggesting anything. I am merely trying to put these figures into proper perspective.

There was some reference made this morning to the 32 per cent of these commercials described as entirely non-Canadian. That is not a fact. Looking at item 5 you will see that in 1972 we are talking about 10.6 per cent of national commercials. With these commercials there was adaptation necessary, and by adaptation we are talking about a need to do a new sound track, new visual components, new music, or whatever. In those cases where components, processing, or whatever, was essential, it was provided by Canadian production companies using Canadian talent. So some elements in this production area really provided revenue for Canadian production companies and talent.

I submit those as facts, as we know them. I would suggest, again, that this is not an extensive survey. However, it seems to be one of the most reliable we have to this point. The ICA-ACA Joint Broadcast Committee is cooperating with the CRTC at the present time in an effort to institute a much more extensive survey to dig out the facts, and I would suggest that the Kates, Peat, Marwick Report probably adds some additional insight.

May I now talk about talent. Talent was a very important issue this morning. Mr. Siren and Mr. Parrish very ably presented their point of view and I, too, endorse what Mr. Parrish referred to as an ideal compatible constructive relationship which I think has been developed with Mr. Parrish and Mr. Siren, and I trust that they will stay in their respective positions of responsibility in ACTRA for some time. They have been most helpful to the industry. As chairman of the team that negotiated the present agreement with ACTRA, I can personally vouch for that. However, again, to examine several side issues, unquestionably signatories of that agreement endorse the use of Canadian talent in production and the further increase in the use of Canadian talent and production capabilities. We must again keep in mind the fact that ACTRA has done many things to improve the depth of the talent pool. There has been some criticism that it is not broad enough. There was reference made this morning to a catalogue called Face-to-Face, and that catalogue has been most helpful to advertisers and agencies. However, ACTRA's primary concern has to lie in the promotion of their own ACTRA performers, whereas our concerns are primarily the encouragement of the use of Canadian talent being broadened, with specific reference to ACTRA talent. There are some clauses in the agreement, one specifically, which do make it a little difficult to expand the pool by including in it untried, unused, or new Canadian talent. I refer to clause 702, which deals with the exceptions of the use of non-resident Canadian talent for television. Clause 704 of that agreement reads:

> Except as provided in Article 703, the engager agrees that only members of ACTRA shall be engaged as performers in radio commercials, except that non-members may be engaged to appear as themselves to endorse or give a testimonial about a product or service.

That would be the case where Mrs. Jones of Sudbury said something on behalf of the Jones' family. These are very restrictive kind of parameters in the use of talent. It does make it somewhat difficult for us to just literally pick people out of the street or to use talent that we feel might have some ability, but who are not members of ACTRA. I present that as a fact.

Senator Laird: That agreement is between ACTRA and who else?

Mr. Ross: It is between ACTRA and ICA and ACA, acting on behalf of the advertisers.

Senator Buckwold: Would that not be typical of contracts signed in the United States by organizations similar to ACTRA with advertising groups?

Mr. Ross: I would imagine, Senator Buckwold, that the main function of any union is to promote the welfare of its membership.

Senator Buckwold: I agree with you that it is a very restrictive clause, and were I in your shoes I would not like it a bit. On the other hand, I suppose it is part of the industry with which you must live.

Mr. Ross: We accept it as a fact of life and we are presenting it as such.

Senator Prowse: Has there been any problem to date with that clause?

Mr. Ross: I cannot specifically cite any problem, but the objections to this by advertisers and agencies are quite obvious. They feel it is too restrictive.

It is particularly important to make reference to some of the events which followed, shall we say, the negotiation of this agreement. The industry, as a whole, called a meeting which took place at the King Edward Hotel in Toronto. In attendance at that meeting were over 100 representatives of agencies and advertisers and the thrust of this agreement was made very clear to all those present, as well as the details of it. There was some objection to this kind of clause, of course.

Senator Prowse: I am wondering whether you have run into any specific case where someone was prevented from doing something reasonable that they wanted to do because of the restrictions contained in that clause.

Mr. Ross: I cannot give you a specific example, but its impact is so clear it is obvious.

Senator Buckwold: Did we not hear this morning that work permits would be granted . . .

Mr. Ross: Only providing that these stipulations were met.

Senator Buckwold: For example, if you are looking for a particular kind of voice or a face which projected a special kind of image, and you haven't had an opportunity to see Senator Forsey, and one of the fellows runs into him and decides that he is the gentleman to do that kind of commercial . . .

Senator Forsey: I think it is Senator Buckwold whom you should get.

Senator Davey: I would not hire either one of them.

Mr. Ross: We could engage Senator Forsey for television providing we conducted a very, very extensive search through ACTRA. This is another proviso in the agreement, which is different from the previous agreement. The previous agreement contained a very general statement to the effect that if the performer needed could not be found through ACTRA, then we could hire someone from outside.

The new agreement provides that the engagement of non-actor talent and non-Canadian performers shall be limited to the following circumstances—specific restrictions follow. In addition to that we agreed that it is essential that we pursue as thoroughly as we can, or look for talent among the present active membership.

Senator Laird: Yes, but no senators are members of ACTRA.

Mr. Ross: We would like to have them. It would add certain breadth.

Senator Davey: Are you objecting to the clause you are reading?

Mr. Ross: It is article 704, and we did object to it.

Senator Davey: But you accepted it because of the agreement, is that correct?

Mr. Ross: Yes, some conditions are accepted on that basis.

Senator Buckwold: I think you are making the point that life is not always easy.

Senator Davey: But you did accept it.

Mr. Ross: That is right.

Senator Davey: You do not like it, but you are living with it.

Mr. Ross: Absolutely.

Senator Prowse: ACTRA did not prevent Canadian talent appearing on CBC programs up to 60 per cent.

Mr. Ross: ACTRA had a very specific agreement with the CBC.

Senator Prowse: Was it restrictive, or non-restrictive?

Mr. Ross: That is something that Mr. Siren might answer. In answer to many thoughts which might occur to you with respect to the agreement, it has some advantages. I am not a professional negotiator, but we found negotiating with Mr. Siren to be constructive. Two parties sit down on different sides of the table and there is a need to come together in the centre. I refer to that specific clause only because it relates to the issue at hand today. That is the question of the availability of talent and the ability to provide it in a Canadian pool.

Senator Prowse: Then your point in bringing it up is that you are telling us that because of that restrictive provision the talent would not be available for a sudden expansion of Canadian production.

Mr. Ross: I am suggesting that this could limit the ability or, shall we say, the opportunities to expand the Canadian pool of talent by bringing in new faces and performers who are not presently members of ACTRA.

Senator Buckwold: How often do you expose the same face? I am not referring now to a prominent personality, but the person who is advertising shaving cream or Listerine. One week he is gargling and the next he is on snowshoes. This must present a problem.

Mr. Ross: Yes, the amount of exposure given to any one talent is of concern and it is always a matter of concern to the advertiser and his agency because it is vital that there must be in communication conviction as an essential element. We agree that there would be a lack of conviction if our spokesman were selling snowshoes, facial tissues and many other products. This is one of the problems we face when we do not have as broad a choice as we would like. This then reverts to how deep is the pool of talent.

Senator Buckwold: You are really saying that you do not feel that there is a large enough talent pool in Canada at the present time to meet your needs?

Mr. Ross: My answer would have to be no, not to meet all the needs.

Senator Buckwold: Your answer is no?

Mr. Ross: Yes. I believe it is an excellent talent pool. There are great talents and we have seen in response to questions regarding salaries that there is a leaning toward a small group of talent primarily, I suppose, because they are more talented than the others. However, there are many occasions on which we find that we cannot find the type of personality, character or ability which is essential. We would like to think that the pool would be much deeper and broader.

Senator Prowse: That would have to be a performer who is not presently in the pool, would it not?

Mr. Ross: Yes.

Senator Prowse: You are searching for talent that is not presently in the pool?

Mr. Ross: That would be one way by which to improve the situation.

Senator Prowse: If you find someone who has something you want and cannot find in the pool, that is all you need to get around it. The producers would employ him, and he would be issued a permit.

Mr. Ross: If this person were employed for radio, unless these exceptions were met and the person was of international reputation or had given a testimonial, we would really be unable to use that person as a radio talent.

Senator Davey: Would you repeat that please?

Mr. Ross: Article 703 contains restrictions which refer to the engagement of non-Canadian performers.

Senator Davey: Could we obtain a copy of that agreement?

Mr. Parrish: Are you referring to the ACTRA agreement?

Senator Davey: Yes.

Mr. Parrish: We will see that you receive that.

Mr. Ross: We are referring to articles 703 and 704. Article 704 provides: "Except as provided in Article 703,". These exceptions refer to a great extent to visual exceptions and therefore do not apply. Article 704 reads as follows:

> Except as provided in Article 703, the engager agrees that only members of ACTRA shall be engaged as performers in radio commercials, except that non-members may be engaged to give a testimonial about a product or service.

Therefore that is one exception. If we find someone who is not an actor or a member who appears as himself we can obtain a work permit from ACTRA. It may be Mr. Jones, talking about the Jones family and their use of facial tissue or whatever it is. This would also apply in the case of a person we wish to employ in a radio commercial who is a performer of international reputation. However, I do not believe there is any other exception which would give us the opportunity.

Senator Prowse: What is the situation with respect to radio, where presumably announcers read many of these commercials and you might need a special voice?

Mr. Ross: Yes, or a type of performance. For example, it could be a type of performance involving humour, with a voice that is not too familiar to the audience.

Senator Laird: Do you mean an amateur?

Mr. Ross: Yes, it may be an amateur.

Senator Laird: It could be an articulate housewife who uses a particular brand of soap.

Senator Prowse: No, that is a testimonial, for which there is provision.

Mr. Ross: We could not use a semi-professional or an amateur who might be a talented comedian, but was not a member of ACTRA, period, on a radio commercial.

Senator Davey: Do you quarrel with that?

Mr. Ross: I do if I believe this man can communicate the idea of the script better than anyone we can find in ACTRA.

Senator Prowse: Is that not the very basis for obtaining a permit and ACTRA issuing it?

Mr. Ross: I would hope so, yes.

Senator Prowse: Have you any reason to think they would not act in that manner?

Mr. Ross: Well, based on this agreement they cannot.

Senator Prowse: No, but have you had experience in which you have wanted to place a performer in a position and were unable to do so?

Mr. Ross: Mr. Siren might answer that question. Has anyone come to you on that basis, Mr. Siren?

Senator Prowse: No, Mr. Siren was before us this morning. You are giving us evidence now. I want to know the basis for your evidence?

Mr. Ross: My basis for this evidence is the agreement, which would prevent us from doing that.

Senator Prowse: You must be reading it to us for a purpose and now you are saying this is the problem you have. You then tell me that you have never experienced a problem in that regard.

Mr. Ross: I can only talk personally about our own operation.

Senator Prowse: But from your own knowledge, as far as you know, this has never been a problem to you?

Mr. Ross: That is true.

Senator Prowse: Or to any of the people that you are associated with so far as you know?

Mr. Ross: I cannot speak for the others. As far as I know, yes.

Senator Prowse: Okay.

Senator Buckwold: Just one supplementary on this: Does this restriction always apply to television when you cannot literally pick up somebody and, you know, the typical housewife, all these TV commercials we have about some kind of detergent, where the lady says, "I am the mother of four children, I am the typical

housewife," she is a mother or just an actress you brought in?

Mr. Ross: No, this restriction does not apply there.

Senator Buckwold: You could do that?

Senator Laird: Someone said it was a testimonal.

Mr. Ross: It does not require that it be a testimonial for the television commercial.

Senator Graham: Your association is doing something to develop the pool of talent or do you consider that not part of your job?

Mr. Ross: We have an on-going committee which is involved in this area to find ways and means, along with ACTRA, to help develop talent.

Senator Laird: ACTRA is doing a job on that, apparently, developing talent.

Mr. Ross: Well, as we have explained, the purpose, the thrust of this agreement to the advertisers and agencies, some major corporations have sent out specific memos to their agencies and through their employees in the marketing division which stipulate that there is to be use of Canadian talent only except for rare or special circumstances. This has happened.

Senator Buckwold: Mr. Pengelly, will there be others making general statements?

Mr. Pengelly: No, just Mr. Ross.

Mr. Ross: May I move on to other statements?

In terms of the production capabilities, in April, shall we say, a representative survey was made of major production companies in Toronto, and I cannot tell you the number of them, but I can tell you this, that approximately 80 per cent of the production of television commercials in Canada takes place in Toronto. The percentage of output that was sold to American corporations, for use in the United States, ranges anywhere from three per cent to 30 per cent.

Senator Prowse: From company to company?

Mr. Ross: The highest percentage came really from the videotape companies, and this morning I think a senator suggested probably the constructive way to look at this whole issue was the possibility of promoting the industry to the United States or to customers in the United States, which we would endorse for several reasons.

First of all, I think the videotape industry in Canada is accepted on this continent as leaders in the field. Canadians have developed many, many technological advances which have put them in the forefront of videotape companies. Americans have found this out and have sought their production facilities. In addition to that, I think if you look at Appendix A, which is an article written in an American magazine, which talks about production facilities in Toronto, there is a clear-cut indication that the entire industry in Toronto is well equipped, very capable and can provide a useful service. In addition, they have two selling points. They comment on the advantage and price. This is a strong selling point, obviously, and they talk about the efficiency in producing commercials. I would suggest these three points, technical advancement in the videotape industry, price and efficiency advantages, are very viable.

Senator Buckwold: May I ask a question on that? If the Canadian industry is basically located in Toronto and is so capable, so efficient and so low cost, then why has the increase in the number of commercials being made in Canada, in the light of all the advertising that you have just given to the industry, been so low? Why have more advertisers not taken advantage of that sitaution?

Mr. Ross: I would suggest, Senator Buckwold, there are many answers to that question. We would assume, as sophisticated businessmen, all the economic elements have been examined by the advertisers and a decision has been made that says there is some other advantage here.

Senator Buckwold: You are suggesting there is a field here?

Mr. Ross: There is, absolutely.

Senator Buckwold: Yet, as I say, the Canadian firms are using American advertising, basically, to a large extent and are not particularly swinging into it.

Mr. Ross: We would like to...

Senator Buckwold: I was trying to relate the two. I find a bit of an anomaly.

Mr. Pengelly: If I may speak to that point, please. I think it is very important we recognize the reason why those companies do use those American commercials. They do not deliberately slight the Canadian producer. They view the American commercial as something that is in existence and then it meets the exact needs of their marketing strategy in the Canadian market. I think earlier it was referred to as featherbedding as a possibility. Would there be any merit indeed in producing a commercial that was identical to one that was quite effective for their needs that came from the States? I suggest, no.

Senator Buckwold: Of course, some of us feel the whole key to what we are talking about, the fact whether there is some merit in every commercial, not at the will of the advertiser but in the interests of the Canadian identity, is to have those done in Canada. It is broader than that.

Senator Laird: Before we get off the topic of exports of Canadian produced commercials, has your association developed any figures that are anywhere close to being accurate in your opinion?

Mr. Ross: I would suggest to you, sir, they are reasonably accurate but the most accurate figures can be provided by the production industry. I am sure they would co-operate in supplying these figures.

Senator Prowse: Some of those are in Appendix A.

Senator Davey: May I ask a supplementary question?

The Deputy Chairman: Yes, Senator Davey.

Senator Davey: I read the article from *Television/Radio Age* which is an appendix to your presentation. I put this question to you, perhaps Mr. Ross. I read it last night. I was amazed you would include this as an appendix to your brief because of the absolutely shocking way this country is patronized throughout this entire article. I just read you one paragraph and ask you, as a Canadian, to respond to this. I choked on this last night—I do not want to lead you on this:

> There is much of Toronto that is American. Motoring into town from the airport and even browsing about the streets, one has a hard time telling he's out of the U.S.

How do you respond to that as a Canadian? Are you encouraged by that? Does that please you?

Mr. Ross: Frankly, that does not please me.

Senator Davey: The article is full of this kind of patronizing nonsense. I am shocked. I should not say "I am shocked". I find it surprising that you would include this kind of article in an appendix to your brief, and particularly it spells out in considerable detail the way in which the advertising community patronizes this country.

Mr. Ross: Senator Davey, I submit here it is an opinion. I would say it is a somewhat authoritative American publication.

Senator Davey: Isn't there something more important than the rising market in commercial production in the United States for the Canadian video industry? Isn't there something more important in this country than the fact that some big companies are able to cream off a little extra business in the United States?

Mr. Ross: This is an element that we wish to consider. It is part of our consideration.

Senator Davey: I do consider it, and I am considering it. I read it with interest. Surely, there is something more important? I happen to believe that the members of ACA are interested in encouraging a Canadian identity. I know many of you personally, and I know how you feel about this country. I am not suggesting that any person or any group has a monopoly of concern about the country. I just feel that the whole tone of that article is summed up in that paragraph I read, and it makes me unhappy as a Canadian. Doesn't it make you unhappy?

Mr. Ross: Yes, it does.

Mr. Pengelly: I think we have to recognize that this is an editorial style. We were not submitting it as an example of editorial style. We were submitting it as evidence that there was a genuine interest in commercial production in Canada.

Senator Davey: I am not concerned with the style. I am concerned about the content. I do not think that Toronto is an American city, and I resent the suggestion from an American publication that it is.

Senator Prowse: Where is the magazine mostly circulated?

Senator Davey: In the United States.

Senator Prowse: Then whom do you expect them to write for? If I were writing for the American market, I would say the same kind of thing.

Senator Davey: Perhaps you would, but I wouldn't.

Senator Prowse: To say to the other fellow that he is just the same as you is not going to impress him. You do not like being like them.

Senator Davey: Have you read the article?

Senator Prowse: I have read most of it.

Senator Buckwold: I wanted to ask a general question. I am not sure whether Mr. Ross has finished his basic point.

Mr. Ross: I was just going to add one point. We are examining the question of the Canadian product known as film production, which is a component of commercial production, some of which is being sold to advertisers in the United States. This subject has been discussed this morning, this afternoon, and will be discussed again, about the relative value. I am giving you additional information that can help you decide just how important this area is. There is another consideration relative to that. Particularly, one of the tape production companies also is involved in the production of programming for American television.

Senator Davey: Warren? Is that what you had in mind?

Mr. Ross: Yes. Since a reasonable amount of your financial revenue comes from the sale of commercial production in the United States, we must consider the total economic scope of their operations. I thought I would present that to you.

Senator Davey: I am interested in the welfare of members of ACTRA just as much as I am interested in the welfare of the Warren employees.

Mr. Pengelly: Finally, in our brief, we have reviewed some of the steps taken by our industry in the past, and we have come to two basic conclusions which we have submitted for your consideration. The first is that our association is fully in favour of increasing the use of Canadian-produced commercials. We do not, however, believe that it is possible at this time to take steps to ensure that all radio and television advertising be completely produced in Canada. We have programs currently under way which are working in the right direction, we submit, and we are confident that they can and will continue to work. We would expect to see some 71 per

cent of Canadian television commercials produced in Canada by 1975, and 75 per cent achieved within five years; and we would be prepared to establish these as industry goals, work towards them, and track their progress with CRTC.

The second point: if, as discussed in our brief, a review of current tariff arrangements seems appropriate, we would be prepared to work with the Department of National Revenue to review the current basis of value imported commercial material. We would add to this review the inclusion of the consideration raised by Mr. Hunter in his brief. This summarizes our position, and we would be most happy to answer any questions in any other areas that we have omitted.

Senator Buckwold: On May 1, 1972 you had one of the most knowledgeable and one of the most influential men in Canadian television and radio—namely, Mr. Juneau, the chairman of the CRTC—speak to your group; and, in terms which were quite unequivocal, he said to you that he believes there must be more Canadian content in advertising. He said, "I am absolutely convinced that there is in Canada all the needed talent, artistic and technical, for the production of top quality commercials."

Later on he went on—I am paraphrasing—to indicate that he expected the communications industry to move in the direction of Canadian-produced TV and radio commercials by writing their own rules without government regulations.

My question is: That was over a year ago. That was a pretty strong statement, and one that received a good deal of publicity. What action of real consequence—not just a do-good, motherhood sort of thing, that "We are going to co-operate"—what action did the Association of Canadian Advertisers take as a result of that challenge?

Mr. Ross: May I defer that question to my co-chairman who is involved in some action of this kind and can be more specific?

Mr. David Hopkins, Co-Chairman, Joint Broadcast Committee, ACA: Action was pursued in two areas, both of which were started prior to Mr. Juneau's statement to the association. One was the action of the committee for promotion of Canadian commercial production. This was the committeee which the ACTRA people were referring to, and it was also referred to in our brief. It was a committee established to look into ways to induce higher levels of Canadian commercial production in the industry.

One of the primary areas that the committee got into was working with the CRTC on ways to move this forward in a way that would benefit both the commercial production end of the operation, and, as we noted in the brief, without harming the media end of the operation unduly, because of the very real concern to the CRTC, as was mentioned in our discussion with them, which was maintaining the ongoing financial support for improving their Canadian programming, starting up global networks—although we did not know at that time that this was what was in their minds—these types of things, and fighting off the incursion of cable television, which was developing very fast. So there was the prerequisite there that steps be taken that would not harm the revenues to the television industry to a serious extent We then looked with them at the facts available, and we found that the surveys that our association, jointly with ICA, have been doing over the years give an indication of what is happening. They do not talk about money. They do not say where the dollars are going. They do not say who is spending money where. So we worked with the CRTC in developing a questionnaire, which they have and which they are about to circulate, which explores two basic areas, one of which is the production pattern, which would be an ongoing survey covering a six-month period, which would track where commercials were originating almost on a census basis. This would be mailed to a list of advertisers that we had prepared for them—some 230 advertisers made up of total ACA membership plus any of the top broadcast advertisers. This was rather looking at the one-week information which our survey represents from a limited number of agencies, albeit quite a section of the industry. This would be almost a census on where national commercials were coming from. That would be the number of commercials, which, in effect, would validate, on a solid basis, where the industry stood in terms of percentages.

The other very key area is where the dollars were going. How much money was being spent importing commercials? For example, industry estimates at the moment would show that of the amount that Canadian companies are spending to obtain films to put on the air, probably something of the order of 90 or 95 per cent is going to Canadian companies. This is because $64 is only being paid when bringing in commercials. But in terms of the pot of money being used, 90 to 95 per cent would be a top-off-the-head estimate at the moment as to the amount already going into Canadian sources.

The CRTC survey proposal would look at this in terms of revenue both to production houses and to performing talent. They will be looking at the break-out revenue going from Canadian companies to foreign or Canadian production houses and to foreign or Canadian talent. It is our feeling, and I think this is shared by CRTC, based on the discussions we have had with them, that this type of factual information is needed in hand before very specific proposals should be made, other than the ones which we were already taking which were promoting, on a common sense basis, how to get more people moving towards more Canadian commercial production.

Senator Buckwold: What you are really saying is that even before Mr. Juneau's challenge to the industry you have been doing factual surveys and studies on which to base programs that might be effective in meeting Mr. Juneau's challenge?

Mr. Hopkins: That is correct, senator. It has been an on-going dialogue with the CRTC.

Senator Buckwold: Would you not have been doing that in any event? What I am trying to get at is what your reaction was to this statement? Mr. Juneau, in public statements since, has indicated that he is not all that happy.

Mr. Hopkins: If I could make what may be a personal comment, I have been closely involved with these kinds of activities as, indeed, many of the people here have, on our Joint Broadcasting Committee, and my experience has been that we do sometimes have a problem, if you like, stirring up the industry at large, and in many respects I regard Mr. Juneau's statement at that meeting as a very helpful nudge to help us get people behind us and understand what was going on in the industry.

Senator Buckwold: Do I gather from that that most of your members did not take it very seriously?

Mr. Hopkins: I think it is very hard for members who are remote. We must remember that advertisers are not normally, unless they are substantial advertisers, staffed in-depth with specialists in...

Senator Buckwold: I am referring to the larger advertisers.

Mr. Hopkins: The larger advertisers were aware of what was going on.

Senator Buckwold: But has this been translated into new business for Canadian-producing studios in any substantial way? The 2 per cent to which you referred is a pretty minimal increase in this field. That is really the point I am getting at.

Mr. Hopkins: My honest answer to that, senator, is that we do not have the facts on which we can answer "yes" or "no." I would suspect that it has, and I think that probably the full 1973 figures which come out in October of this year would support that. I suspect that the figures, which could be obtained either from the performing unions or from the production houses, would suggest that in the past 12 months there has been a substantial increase in that trend. I do not have the figures at the present time to support that.

Senator Prowse: I have one general question. I gather that you gentlemen are all people who buy advertising and ordinarily you hire an agency to do so. Is that correct?

Mr. Hopkins: That is right.

Senator Prowse: I presume, if you are a large enough company—and I do not know whether or not you do represent large companies; but obviously, some of you do—you would have your own marketing divisions and they would be the ones who would be in contact with the advertising agencies as to what the program is going to be. You decide what it is you are going to sell, of course. I want to know to what extent the decision is made by the advertising agency or by your representatives as to whether you would use a Canadian-produced commercial or not? Would that come up in the course of the discussion? Would you simply say that you want this to be in a Canadian locale using Canadian talent and Canadian producers, or do you accept the advertising agency's decision as to which to use? Do you specifically tell the advertising agency what you want, or what advice do you get from the advertising agency? What help do you get from the agency? How do you inter-relate?

Mr. W. T. Blakely, President, ACA: Just to re-identify myself, my name is Tom Blakely and I am the senior staff officer of the Association of Canadian Advertisers. The advertiser is the man who spends the money and who pays the bill. Very often, the word "advertiser" gets confused with the agency people. I should like to answer that because of my experience in the agency business and because of my experience in marketing. In the main, the decision as to what to advertise is obviously made by the advertiser. That decision is made as a result of internal marketing production department conferences. They decide that they have a good product and they want to sell it. They then decide what will cause people to buy it and what they want the people to know about it. That decision is likely best to be made by the advertiser. The advertising agency is able to polish, through its communication skill, the appeal. They also decide, of course, how they wish to communicate their product—as to whether it should be print advertising, skywriting, outdoor posters, or whatever.

Once the media communication decision is made, it is made on a medium. Let us say that the medium to be used is television. If you start from a raw point of view, I do not think there is once in 100 times where you would decide to get out of Canada to produce the commercial, other than for reasons of climate, or, perhaps, because it is a unique product for which you need a voice appeal. In that case you would explore the Canadian market and only if the required talent cannot be found would you consider going outside of Canada to produce it. It would be axiomatic to consider doing that.

Senator Laird: But the advertiser must rely, to a great degree, upon the advice of the advertising agency, mustn't he?

Mr. Blakely: Well, he must rely, senator—"to a great degree is often a matter of relevance.

Senator Buckwold: The fact that they have already prepared that commercial for the U.S. market does not come into consideration?

Mr. Blakely: Well, if we were starting from scratch, as I was outlining, then that is the way it would be. However, if a similar commercial were already in existence in the U.S., and in the case of where a background could not be identified and where there was no real reason for making it over, the advertiser, naturally, would not want to pay for something which he already had.

Senator Prowse: That is where there is a branch company?

Mr. Blakely: That would be in the case of a multi-national corporation. The multi-national corporation

would, naturally, tend to think in those concerns. That, however, is not as often as one would imagine. In the drug field, for example, there are rules in Canada which are far different from the United States and almost every drug commercial has to be made over. Packaging is another area where there are differences. When such differences occur, what can happen from time to time is that portions of a commercial can be re-made and portions of it can be used.

Senator Prowse: Or commercials dealing with subscription drugs.

Mr. Blakely: Well, subscription drugs cannot be advertised, senator.

Senator McElman: With that criterion, how could you possibly get an advertisement such as that one for Crisco where that silly old ass calls his wife to find out what she uses to make piecrust?

Senator Prowse: Everybody has to diet to lose weight, I think.

Mr. Blakely: If I may comment on that, senator, and I have been waiting for some time to make this comment: Advertising is a fascinating business. There are many, many facets and many people who are interested in one facet or another. Because of this it is very difficult indeed to be all things to all people with any one commercial. The advertiser has to make a saw-off on who he is going to talk to. You will excuse me if I say that no one in this room is likely to regard himself as an average man. In fact, if I called you an average man you would be offended. I think that probably the market has to be aimed at the average man. You think the fellow on the phone for Crisco is an ass; I privately share your opinion, but I am sure that the people who make Crisco think that it is a good commercial. I think that has to be the criterion.

Senator McElman: Well, I hope a representative of Crisco is here. I have requested my wife not to buy Crisco under any circumstances.

Mr. Blakely: I think it is a matter of taste and opinion, senator, and this is one of the great privileges of living in a democracy.

Senator Prowse: If they put it in a Maple Leaf tin he would enjoy it.

Senator McElman: How can a firm possibly feel that it would be to its advantage to allow an ad such as that which just must have been produced in the United States? They would not have brought that old fellow up from Virginia or Arkansas to do the production work in Canada. How could they possibly get in through the criteria you use?

Mr. Blakely: They probably like it, sir; it sells Crisco.

Senator McElman: Not in my house.

Senator Buckwold: You suggested that you would like to see a goal of 75 per cent in five years.

Senator Davey: Did they say they would like to see that, or they thought that is what it would be?

The Deputy Chairman: The brief reads at page 9:

> Based on current trends as outlined in "Industry Activities to Date"—point 2, we would expect to see some 71 per cent of Canadian TV commercials produced in Canada by 1975 and 75 per cent achieved within five years (assuming a more detailed survey confirms the accuracy of current data).

Mr. Pengelly: The problem has really been identified by Mr. Hopkins. We recognize some degree of limitation in our numbers and if the numbers are substantiated by the survey being undertaken by the CRTC, then these goals in our opinion are reasonable. If, however, the numbers emerge differently we would obviously have to adjust to them. We are saying that we think there will be progress. The degree we think will probably parallel the experience of the past, possibly with some increase. We could not be more specific, because we do not have specific knowledge.

Senator Davey: I wonder if that was a prediction, or an expectation?

Senator Buckwold: The last sentence of the paragraph is the one which interests me, in which you say:

> We would be prepared to see these established as industry goals and track progress towards these goals with the CRTC.

Mr. Pengelly: That is right.

Senator Buckwold: In other words, you are saying that you would be prepared to accept that as a goal. Would you be prepared to accept it as a regulation? We have regulation for content of Canadian programming on television. Would you be prepared in that period of time to accept that as a regulation?

Mr. Hopkins: We say here that it should have the same strength as a regulation. In our discussions with the CRTC one of the problems is how will this be regulated at something other than a 100 per cent level.

Senator Laird: You do it with programming.

Mr. Hopkins: Yes, but do you do it by advertiser or by product. Do you do it to the broadcaster and tell him it must be 70 per cent of his time? Is it fair to do it that way in all situations?

Senator Buckwold: That is a very difficult aspect. How would you solve that?

Mr. Hopkins: One way of doing it would be to have a CRTC census so that we would be in a position to agree on where we would like the industry to be. 75 per cent is the way the numbers came out, projecting what we have at the moment. However, we are really talking of sitting down and discussing the facts with the CRTC and agreeing on a reasonable objective. We track towards the objective and if the trend is not going that way and we are not achieving it, then it is very easy

to notify the industry at large of what has happened and what we promised would happen. If we do not do it, someone else will.

Senator Buckwold: I do not believe that would work at all. You are asking the industry to discipline itself.

Mr. Pengelly: I think it would work.

Senator Laird: This might be an excellent time for me to point out the validity of this observation by mentioning CKLW Radio and TV in Windsor.

This will give my friend, Senator Davey, an opportunity to comment on the situation. I should inform you that I filed a letter addressed to me from those stations. This letter pointed up the real problem that would be created if a compulsory figure were laid down. Would you consider that in a case such as that, where the radio and TV market aimed at is Detroit, it would be difficult to impose a definite percentage? Could it be flexible and is this what you are attempting to tell me in answer to my question?

Mr. Hopkins: That is certainly an extreme example. To be honest, it is more extreme than those I had in mind. Obviously they will have problems. I was really thinking even in terms of going from major urban stations to smaller rural stations where the mix of national versus local advertising is different. They are not working within the same parameters.

Senator Laird: That is right. Now I understand why you raised the point and I am very glad you did, because it gives me a chance to introduce the peculiar problem which exists in Windsor.

Mr. Blakely: May I add a point?

Senator Davey: Is this with respect to Windsor?

Mr. Blakely: No.

Senator Davey: I think it is unfair to our guests to discuss the Windsor situation at this particular point. I would be prepared to do so, but I think it would be unfair to take their time. Senator Laird is perfectly correct and I would like to discuss it at some point, but I do not think we can do it today.

The Deputy Chairman: Could you postpone it until tomorrow?

Senator Davey: At your convenience, Mr. Chairman.

Mr. Blakely: In endeavouring to achieve a given percentage of commercials for every company, or the total, a given number or percentage of commercials must also be laid down for each individual company. Let us say, Senator Buckwold, that you manufacture widgets and are an American company. I am manufacturing widgets as a Canadian company. It is conceivable that because I make all my commercials in Canada you would not have to make any, but the industry would achieve its average. That is not desirable, however.

Senator Buckwold: I do not believe that is the way it would work.

Mr. Blakely: No, as a matter of fact, if every company does not carry its load, eventually it has to go on that basis. It is not a one-for-one situation inside each company. Your company might make five commercials and mine 10, or it might be the reverse. The number of commercials alone, or numbers of commercials by company or numbers of commercials alone by company or by dollar volume, just will not satisfy the issue. It contains too many elements. That is why I say it must be goodwill working with goodwill.

I am a little sorry that in the interest of the committee we became so rivetted to the questions of ACTRA and the Joint Broadcast Committee contract that it seemed to take on more importance than it deserves. I would like to divide all the time and comments in that regard by about 20, if I may.

Senator Davey: First of all I would like to ask a question with respect to the Association of Canadian advertisers. You say that there are over 200 Canadian advertisers whose combined projects form approximately 75 per cent of the total amount spent on national advertising. What would that amount to in dollars?

Mr. Blakely: Approximately $350 million.

Senator Davey: How much of that $350 million is spent by international, American, or Canadian subsidiaries of American corporations?

Mr. Blakely: That is a tough one. It would be somewhere between 40 per cent and 50 per cent, but that must be an estimate.

Senator Davey: Mr. Blakely, perhaps I should put this to you . . .

Mr. Blakely: Excuse me, Senator Davey, can we go back to your last question? I may have given a wrong answer to that.

Senator Davey: I wanted to know what percentage of your membership is Canadian companies.

Mr. Blakely: What percentage? About 35 per cent.

Senator Davey: That was my next question.

Mr. Blakely: That is the question I answered wrong, sir.

Senator Davey: And then the second question really is, what percentage of the volume is spent by Canadian companies?

Mr. Blakely: Now I cannot just answer that one, but it would be once again a guess, somewhere down around 30 per cent.

Senator Davey: So, in other words, 70 per cent of the volume of member companies, the advertising member companies of the ACA, would be companies that are not Canadian. I do not put this in any pejorative sense. I would like to think perhaps you can reassure me that

these non-Canadian companies are as enthusiastic about the work which Mr. Hopkins and some of the others have been doing with ACA and the CRTC as the rest of us are. Is that fair or just enlightened self-interest?

Mr. Blakely: I was not taking the question as being pejorative. And I think there is great enthusiasm, some by compulsion, some have definite attitudes towards corporate citizenship and try very hard. Some do not give a damn.

Senator Davey: Mr. Hopkins, who we are informed in this paper prepared this brief, is associated with Proctor & Gamble, I believe, who are the largest advertiser in Canada.

Mr. Hopkins: Yes.

Senator Davey: Would it be a fair question, Mr. Hopkins, to ask you what percentage of your company—Mr. Chairman, Mr. Hopkins is not here as a representative of Procter and Gamble. Do you mind my asking you some questions about P&G or would you rather I didn't?

Mr. Hopkins: I would prefer if you didn't.

Senator Davey: Fair enough. I won't ask you that.

Then we will simply rest on the assurance I have from Mr. Blakely that the American members of ACA would be in favour of this graduated move towards Canadian production.

Mr. Blakely: I think so.

Mr. Pengelly: Let me add just a point. I work for Warner-Lambert.

Senator Davey: I will not ask about your own company.

Mr. Pengelly: Just as an example of what I call the endorsement of the principles behind what Mr. Hopkins is saying, companies take different ways of trying to reach the goals. In our company, for instance, not because of the things that Mr. Juneau was doing necessarily, but because it seemed to make good sense—we have both Canadian agencies and agencies who are international agencies, because we are an international company—we actually have, in our letter of agreement with all five or our agencies, that their compensation is increased on the production of commercials which they originate rather than pick up. I think that is as good evidence as I could submit that we are really trying to help this.

Senator Davey: And the direction in which I am heading simply is to observe that Canadian companies might have more understanding of the thrust of the whole concern some Canadians have about this problem. It might be more difficult to transmit this concern to American head offices, I would suggest to you. I would further suggest to you, however, that the thrust of what we are doing here today, and Mr. Juneau's speech to the ACA and the concern of a lot of people in developing an identity in Canada, have probably helped American subsidiaries in dealing with their American offices. Is that a fair statement?

Mr. Pengelly: I think it is a very fair statement.

Supplementary to the point you made, I think it would help you all to know I personally was instrumental in having Mr. Juneau make that speech because we were anxious—if you remember, on the program he was speaking to the senior executives of our total membership—that his official view be made known in support of work that we were doing, underneath the senior executive level to the advertising managers, so that the companies, as a whole, would understand the desirability of moving towards increasing Canadian production.

Senator Davey: You were the president and the chairman of that meeting, as I recall.

Mr. Pengelly: Yes, I was.

Senator Davey: I take this particular approach because I am very anxious that people like yourselves understand. I do not speak for the community. I speak only for myself as someone who takes this position. I was in no sense anti-American or hostile to American enterprise. There are advantages in some of the aspects of a relationship with the United States, but I am afraid too many Americans and too many Americans operating in Canada do not really understand the dimensions of the move towards Canadian identity.

However, let me ask you a further question about the ACA. Only this morning we had ACTRA here and we had the . . .

The Deputy Chairman: L'Union des Artistes.

Senator Davey: Thank you—the French group. Looking through the ACA list of membership last night I did not see many Quebec based national firms. Is there a Quebec group? Is there an association of Quebec advertisers or Quebec advertisers who operate across Canada?

Mr. Blakely: Senator Davey, about one-third of ACA membership is in Quebec.

Senator Davey: That is really not the question. I was talking about the French-Canadian companies as opposed to English companies operating in Montreal.

Mr. Blakely: No, there are relatively few.

Senator Davey: They are separate operations?

Mr. Blakely: No.

Senator Davey: There are no advertisers' associations in Quebec?

Mr. Blakely: That is correct. The number of French companies is minimal and includes Bombardier and a Quebec City company called Dominion Corset. Regarding companies of this nature, who are international marketers or who market fully across Canada, it is a peculiarity we have not been able to attract French-Canadian companies as members.

Senator Davey: And there is no separate association that we could perhaps speak to?

Mr. Blakely: Well, there is the Publicity Club of Montreal.

Senator Davey: I know it; it is really not comparable.

Mr. Blakely: It is not comparable, but we do work very closely with them. As a matter of fact, one of our vice-chairmen is also the executive vice-president of this club. We make sure we have a liaison there; but any membership—regretfully, no.

Senator Davey: Okay, I do not want to pursue it.

Some of you were here this morning throughout the presentation by the group from Quebec, and it was rather surprising. I certainly enjoyed this morning. I just wondered if we could find out something from advertisers in Quebec.

On page 2 you say,

> Is our Canadian culture being undermined by imported advertising?

I suppose I should put this to Mr. Pengelly:

> First of all we should point out that by far the greatest cultural impact of any medium lies in its editorial or programming content.

I guess I would question that statement. I particularly question the use of the words "by far". We have had representations made to us by other groups yesterday and today that the advertising content of a program does in fact have enormous impact. Do you stand by that "by far"? I just wondered.

Mr. Pengelly: Quickly, on the mathematical basis, you can appreciate that 12 minutes in the hour of commercials versus the remaining 48 in program content is a pretty big difference, but we did anticipate this question, and I would like Jack Dampsy to answer it.

Senator Davey: I am delighted I have not disappointed you.

Mr. Pengelly: Thank you. I am glad you asked.

Mr. J. V. Dampsy, Vice-Chairman and Treasurer ACA: I think we stand by the statement, Senator Davey. We do feel that the influence of the programs is greater in the cultural area than the influence of commercials. We do not deny either has an influence, if only by means of a ratio of six minutes out of 30 in the half hour or 12 out of 60 in the hour.

Senator Davey: Surely, Mr. Dampsy, we can all think of situations? For example, my colleague, Senator McElman, cannot recall a program on which he saw his favourite commercial. Obviously the commercial has remained with him.

Mr. Dampsy: That is possible, sir.

Senator Davey: On the question of some programming, perhaps the commercial will have a greater impact upon us than the content.

Senator Prowse: On the other hand, I cannot remember the commercial with the Archie Bunker program.

Senator Davey: Of course, it works both ways.

Mr. Dampsy: I think, in general terms, although I would deplore the fact to some degree, people watch television to watch programs and not commercials.

Senator Davey: You say on page 3:

> An advertiser is simply a businessman trying to communicate effectively with his potential customers. His success or failure as a businessman will depend, in part, on how well his communication is received.

I realize that does not preclude your comments on the content, but I wonder if I could express an opinion —and you may comment on it. I think too many advertisers tend to underestimate, if I may say, the cultural influence.

The advertiser advertises to move a product—there is no question about it, I have no quarrel with that, and you can perhaps comment on it—but I think some advertisers tend to almost ignore the social impact, the cultural impact.

Mr. Dampsy: I believe they do. I believe that is a wrong decision on their part, because it is only good business sense, if you are advertising in a country to a group of people, to make that advertising compatible with that country. You must work in with the situation within the country rather than try to change it or try to introduce something new. If you tried to introduce a new type of culture by means of advertising, that would be a bad decision, and certainly some bad decisions are made.

Senator Buckwold: I find that there is a significant impact—possibly this is a market that you do not even look at—on very young children who are influenced by advertising. I am thinking of the three, four, five, and six-year olds who remember the advertising more than the programme.

Senator Laird: You are so right.

Senator Buckwold: I had a child tell me the other day that the milk he was drinking was something you "hate" twice a day. So somewhere along the line he hated milk. I am passing this on. Children are influenced culturally, and it stays with them for a long time. I think there is a real responsibility on advertisers to make sure that it is not dangerous.

Senator Davey: On page 2 of your brief, near the bottom, you say:

> We are not aware of any regulations affecting the editorial content of print media.

Are you suggesting that there should be some regulations affecting the editorial content of print media?

Mr. Pengelly: No. I have your point, senator. We are not. We are looking at the two and saying we see one,

there is no need of regulations on one. We do not think there is any reason to have it, and there is not in any other media.

Senator Forsey: I listened to this world without end from the private broadcasters when I was on the BBG. It impresses me less and less.

Senator Davey: You are saying that you are not aware of any regulation affecting editorial content of the print media. I say to you, "Should there be?" and you say, "No." I now ask: Should there be regulations affecting the broadcast media?

Mr. Hopkins: The only point that I think is being raised there is that programming on broadcast media is an important cultural influence. Editorial content of print media is an important cultural influence. In my personal view, advertising is probably less important to cultural influence than those two factors.

Senator Davey: But that is really not the point that I am making...

Mr. Hopkins: But that is why that sentence is in there.

Senator Davey: Presumably you do not quarrel with the regulation of broadcast media. You do not take exception to the principle?

Mr. Hopkins: Assuming that advertising is reasonably well Canadianized, maybe priorities should be given to looking at editorial and print media before forcing advertising from a higher level to 100 per cent.

Senator Davey: Mr. Pengelly has just said that he hoped there would not be regulations affecting editorial content of print media. You are saying there should be.

Mr. Hopkins: I am suggesting it might be considered in terms of priorities.

Senator Prowse: It has been considered.

Senator Davey: Mr. Pengelly will be surprised to know that I agree with him and not with you.

Mr. Hopkins: It is not a recommendation.

Senator Davey: That is encouraging. On page 3, the last part of your first paragraph, you say:

> These proportions are well in excess of those that the CRTC has prescribed for Canadian broadcasters program content.

You would agree, of course, that they should be considerably in excess, would you not?

Mr. Pengelly: Yes. I guess the point we have here is how high is up, and what is a practical percentage, and the fact that it is in excess of the program content. We would like to make the point that it is recognized, because quite frequently the deliberations tend to indicate that the people do not recognize that the Canadian content is as high as it is. Our appendix was intended to bring this home to everybody.

Senator Davey: We have been hearing a lot about this in the last several days and someone else made this point. The proportions are in excess of those prescribed by the CRTC for Canadian broadcasting. I do not think it is any cause for celebration, as it is obvious that it should be considerably in excess. I do not think that is particularly encouraging. You obviously do not think that the regulation for advertising content should be the same, that it should be 60 per cent?

Mr. Dampsy: No.

Mr. Blakely: Those figures represent only the national advertising. When you add to that the figures of local advertising, I think you will find those figures are really quite low, low by perhaps 20 per cent.

Senator Davey: Very well.

Mr. Chairman, I have only two more questions. I could put this one to Mr. Ross. In connection with the survey, Appendix C—which of course is the thing we have been talking about—why did you choose 1968 as the base year?

Mr. Ross: That might have been an arbitrary choice, only because for one reason at that time, there would be real difficulty in advertising agencies having precise records going back any further than that, that would provide statistical information for it.

Mr. Hopkins: My recollecton, senator, is that we started the survey in 1969 and referred back to 1968, as Mr. Ross says, the latest available information to make a usable base.

You were raising a question earlier about awareness in the industry. I think the change from that 1968-69 period is really where there was a transition in the advertising industry in awareness of this kind of an issue.

Prior to that, I suggest that there was very little interest or awarness among the mass of the advertisers about the problems of national identity, tailoring their advertising to the market. But I think that the bench mark shows where we started getting concerned about that, and gradually this thing was held through in the seminars we held in 1970, the CRTC Canadian content.

Senator Davey: What concerns me about that, Mr. Hopkins, is that more than half the progress which has been made was made in the first year, and it seems to me that the progress is grinding to a halt. That is what troubles me.

I would like to put this question either to you or to Mr. Ross. Could either of you guess—and I know it would be only a guess and I suppose that you could answer by saying you suppose you could—what would that figure have been in 1960, to say six years before, or would that just be a wild guess on your part?

Mr. Ross: I think there would have been other factors in 1960. There would have been a greater percentage of commercials produced in the United States in 1960,

without question. Primarily, because the production facilities in Toronto, or in Canada, were to a great extent behind the production facilities in New York or elsewhere, and I would say that was a vital factor.

Senator Davey: So around 1960 it crossed 50 per cent, around 1961-62?

Mr. Ross: I would say it would be less than that. Arising out of discussions, I would say that the quality of Canadian production started to come close to the quality of American production as recently as six or seven years ago. In the last two or three years, I would say that the production quality that we can turn out is up to anything they could do in the United States.

Senator Davey: Thank you.

My final question is to Mr. Pengelly. I notice with interest that one of the members of the ACA is the Reader's Digest Association (Canada) Limited, Consumer Sales Division. What does Reader's Digest advertise? Does it advertise itself?

Mr. Pengelly: The definition of advertising for our association, senator, includes direct mail advertising and they are one of the largest users of direct mail in the country. Is that not correct, Tom?

Mr. Blakely: It is a division of Reader's Digest which is a member and does the advertising, it is not Reader's Digest Association itself. It is the Consumer Sales Division—that is, the books, records and this type of thing.

Senator Davey: This did not include circulation advertising?

Mr. Blakely: No. Membership in the Association of Canadian Advertisers is limited. It would exclude any body which made its main revenues from servicing the advertiser.

Senator Davey: Obviously, where I was heading I cannot head, but I will tell you where I was heading anyway. I was going to come back to your comment on the radio station I.D.s, which we heard of this morning. I quite agree that the radio station I.D. hardly qualifies for membership in the ACA. I think it is a form of advertising, though. The singing commercial on the radio station is a form of advertising. I think it is a legitimate area of concern.

Mr. Pengelly: For that radio station, that is quite true. But the media are just not in our membership so your question was very relevant.

Senator Davey: Mr. Chairman, aside from apologizing for my comments on television and radio, which made me so mad last night, I am through.

Senator van Roggen: I read with interest this editorial or article which Senator Davey took such exception to, and I really cannot see what his concern is. As a westerner I have never thought of Toronto as some quaint, Swiss village. If the cab took a different route from the airport into the downtown area I would not know what city in North America I was in either. Victoria is the place that has the monopoly on my attention.

Gentlemen, unfortunately having been engaged in other matters I was unable to be at the meetings yesterday and this morning. It was therefore a matter of interest to me, in looking at your appendix C, to see the figures you were discussing on production in Canada. I gather from your remarks that they are simply the best effort you can make on the information available to you, which is not too complete or all encompassing.

With respect to the figure of 67.8 per cent which is used in Canada, which you say hopefully will grow to 75 per cent in due course, on what is that based? Is it based on the number of commercials or the value of commercials?

Mr. Ross: That is the number of commercials.

Senator van Roggen: In minutes?

Mr. Ross: No. It is strictly the number of commercials, whether they are 30 seconds long or 60 seconds long.

Senator van Roggen: You would not distinguish between a very cheap 30-second commercial for a soap opera in the morning and a one-minute commercial on prime time?

Mr. Ross: It would not provide that information, no.

Senator van Roggen: Nothing in it has any relevance to the advertising spots contained in cablevision programs brought in from American stations, then?

Mr. Ross: No.

Senator van Roggen: Is it your plan, with others in your industry, to try to develop techniques for getting more accurate statistical information along these lines?

Mr. Ross: Senator, Mr. Hopkins referred to an industry research study, and by that I mean a study conducted with the co-operation of the industry by the CRTC, the object of which is to find more definitive facts relative to the subject.

Senator van Roggen: I was interested in this article, and other remarks of yours, as to the substantial amount of work being done in Toronto now for export.

You mentioned, I believe, that the production facilities in Toronto would account for 80 per cent of the production in Canada and that, depending on the company, something between 3 per cent and 30 per cent might be for export. Would you say, in gross terms, what that would be? Would it be nine companies at 3 per cent and one company at 30 per cent, for example? How significant is it? Of the total advertising done, say, in Toronto, where nearly all of the production work is done, what would be a ballpark guess as to what amount of it was for export?

Mr. Ross: There was reference to $6 million and, as a ball park figure, I would say it would be somewhere in that vicinity. Once again, senator, these are the kind of

statistics which we could obtain from the production companies.

Senator van Roggen: These, also, you will be endeavouring to obtain in the new survey.

Mr. Ross: Yes. We will cover talent, production, production facts, and so forth.

Senator van Roggen: That is $6 million in production costs, not actual purchases?

Mr. Ross: That is actual production costs.

Senator van Roggen: What would that be as a percentage of total production? How much is done in Toronto? Would it be $75 million worth?

Mr. Ross: These figures provided by TVB indicate that 2,815 commercials were produced in Canada, and TVB is probably one of the best authorities on that. We are talking now about national television commercials. If we are talking about four-fifths of that, then we are talking in terms of approximately 2,200 commercials. Let us say the average cost of the commercial is $12,000 to $14,000, something higher or lower, we are talking in the area of $30 million.

Senator van Roggen: That is the total?

Mr. Ross: Yes.

Senator van Roggen: And you think that $6 million of that might have been exported, which would be about 20 per cent.

Mr. Ross: That could be.

Senator van Roggen: I think this is important. I am looking forward to seeing the figures once the survey has been completed. Speaking for myself, not for any other member of the committee, I am not keen to see Canada, in the area of television commercials, or in any other area, hide itself behind a wall so that we have no exposure to the outside world. However, I do want to see us get our fair shake of the total package. I would be very interested if we were able to arrive at a solution to a problem such as this whereby 75 per cent of advertising was created in Canada and we imported an equivalent dollar amount of our exporting in this area, so that we have the same gross number of people working in the industry in Canada that we would have if we put a wall around ourselves. I would much rather reach a solution such as that rather than to build a wall around us.

Senator Davey: A supplementary on that. Just to re-establish the point, more than half of that volume which is exported out of Toronto comes from one company. Is that not correct?

Mr. Ross: I do not believe that is correct, senator. More than half would come from two companies.

Senator Davey: We heard earlier that more than one-half comes from one company. It might be useful to the committee if we had specific information as to how much would come from those two companies.

Mr. Ross: Yes, I agree. We again get into this business of the need for specific information from production companies.

Senator Buckwold: I would again remind the members of the committee what we heard this morning, namely, that the figure we just heard now as to the amount of export work done, as it has affected ACTRA, in their testimony this morning, if I heard it correctly, they said that it was reasonably negligible, and it really did not make too much of an impact on them in their part of the industry. I just pass this on for the importance of getting the kind of statistics which Senator van Roggen is asking for.

Senator van Roggen: I appreciate it would be very difficult to get these statistics because you would also have to throw into the equation, somewhere, local and regional advertisements as well as the increased impact of cablevision, which I have already mentioned, because in Vancouver, where I come from, probably 60 or 70 per cent in any given viewing hour, viewers are looking at American stations on cable with all American advertisements on them. There is talk of arranging a mechanism whereby those commercials can be clipped out and substituted with Canadian commercials. I think hard statistical evidence is necessary if intelligent decisions are going to be made in this area.

Senator Davey: A supplementary. I do not think this has anything to do with cablevision or with what people are watching at all. I do not think that follows from your earlier comment. How does that relate?

Senator van Roggen: Well, I think cablevision, for instance, would drop this figure from 67 per cent down to—I don't know what.

Senator Prowse: Yes, but that is not their fault.

Senator van Roggen: I realize that, but as far as the problem is concerned, I think it is a factor.

Senator Davey: But you are addressing yourself to television commercials which were prepared in Canada for use in the United States.

Senator van Roggen: I am addressing myself, basically, to the question of the figure of 67 per cent of television commercials which are presently produced in Canada, which indicates that 33 per cent are imported. I am trying to determine what sort of overall balance we are getting. In addition to that, I am now making the observation that in going into this further statistical work which these gentlemen are going to be pursuing in co-operation with the CRTC, surely the advertising on cable in Canada has got to be put into the equation, because we have a huge influx of American advertising to Canadian viewers in gross viewing hours through the medium of cablevision.

Senator Prowse: Pehaps it is part of our problem.

Senator van Roggen: But it would be a concern to these gentlemen, Senator Prowse, if the CRTC directed that, as it is talking of doing.

Senator Prowse: Well, I think you are in a field that is entirely separate, and that is the whole cable situation. It is outside what we are looking at here.

Senator van Roggen: All right, I will get off cable, but statistically it is something that these gentlemen might want to put into their statistics so that they have in their information how many viewing hours in Canada are used in viewing cable.

The Deputy Chairman: I am sorry to interrupt, Senator van Roggen, but I have been told that we are having a caucus at 5.30 p.m. They are waiting for us downstairs and Mr. Pengelly has just asked me if he could make one or two more observations.

Senator van Roggen: Then I will conclude my questions with just one observation. I hope you will be able to exert your best influences on all the members of your industry to co-operate fully with the CRTC to produce the statistics, because only with accurate statistics will you get the most desirable ruling.

Mr. Ross: We have already made that offer.

Mr. Pengelly: I would like to make two concluding points, because there are several aspects of this whole situation covered in a speech that was given at our seminar in May. I have asked the clerk to pass around to you on the green paper a speech that did in fact provide some more breadth to the considerations, and if you would be so kind as to read that, I think it will help you.

Aside from our recommendations covered in the brief, which you all have and which we have already talked about, I would like to make one other additional recommendation. This comes to my mind as a result of the discussions today. I think it is very important to you, in your deliberations, to hear from the production houses themselves. The number of people employed in the production houses, the development and shooting of a commercial down to the point where it can be aired is probably considerably in excess of the talent in the commercial itself. I think it would be very important to you to have a better understanding of the point of view of the production houses, and I think you should know, and I am sure they will be very happy to explain to you, the percentages, quite specifically, of what they produce in terms of footage or dollars or anything else. And because they have access within the production houses to the exact number of people involved in the shooting and development of a commercial, down to the number of cameramen, propmen, actors, et cetera, that would be most worthwhile in your deliberations.

That is our concluding recommendation. We all appreciate the opportunity to be with you today, and we do hope that the information which has been supplied has been useful. Thank you.

The Acting Chairman: Thank you very much, Mr. Pengelly and gentlemen. We appreciate your co-operation very much.

Before we adjourn, I should like to remind the members of the committee that we are sitting tomorrow morning at 9.30, when we will hear Mr. Rainsberry of the Canadian Broadcasting League. Later in the morning we will hear Mr. Handleman, a member of the Select Committee on Economic and Cultural Nationalism of Ontario. Then in the afternoon we will hear the CBC, and Mr. Juneau at 4 o'clock.

The committee adjourned.

APPENDIX

July 6, 1973

Mr. Maurice Bourget
Deputy Chairman
The Standing Senate Committee
on Transport and Communications
The Senate
Ottawa, Canada

Dear Mr. Bourget:

Further to your letter of June 21st, 1973, unless it is considered to be a dire emergency I would beg the Committee's indulgence as I believe my comments respecting the motion on commercial advertising broadcasting in Canada can be presented in the form of this letter; and the pressures of preparing for a new season with several significant program developments combined with our continuing liaison with the CRTC have over-burdened my schedule.

On the subject in question I am quite confident that the Senate Committee is fully aware that the trends in relation to commercial production for exposure on Canadian television have been very positive over the past several years. While the Canadian content regulations for programming is now fixed at 60% overall, a statistical examination of commercials broadcast in the industry indicate a surge of Canadian activity to the extent that the percentage of commercials produced in Canada is now very close to 70%.

As active producers CTV are in support of the principle of maximizing production in Canada. This philosophical posture however must be related to the realities of our industry. Because of the vast areas which must be covered by communications in this country and the limited population spread as it is over these vast areas, television advertising is inherently less efficient—or if you will less economic—for the advertisers who use it than is their experience in the United States. There are certain advertisers who, if they were faced with the requirement to produce all of their commercial material originally in Canada, would find it uneconomic to utilize the medium; whereas the high cost of commercial production amortized against their exposure in other countries and with minor modifications to the commercials in question to conform with Canadian standards and codes, they are able to utilize television effectively and economically.

I fear that an absolute prohibition of foreign produced commercials might drive some of these advertisers away from television altogether. The resultant loss in revenue would in all probability result in a diminution of program budgets generally and would have, in fact, the contrary effect to that which you and we are seeking. If less revenue is available generally, the costs of distribution would not diminish. It would therefore follow that the only area in which compensation could be made for a diminution in revenue would be in the reduction of either the quality or quantity of programming provided to the Canadian public. This in turn would result in diminished overall dollars to the self same production industry which you are seeking to support.

I trust that the Committee is aware that commercial production is only one segment of a total production industry which includes tape and film as well as live material, and which in the broadest possible context relates to theatrical and non-theatrical as well as electronic means of distribution of material of software (programming and commercials).

Our concern as Canadians must be to see this industry flourish, as it is clearly in the interests of sustaining and strengthening the social, economic and cultural fabric of this nation. There are avenues available to assist with this process. For example, some years ago I wrote to the then Secretary of State and proposed that the CFDC funds be applied to programs made for electronic distribution as well as feature films for theatrical exposure. This policy has recently been adopted.

We have long advocated the expansion of Section 19 (formerly 12.A of the Income Tax Act) which restricts the investment on the part of Canadian advertisers in foreign publications (excluding Time and Reader's Digest) to the field of broadcasting. If this act were modified to include the same restraints on advertisers' placement of commercials on American owned and operated television stations, substantial sums of money would be retained in Canada for application through the broadcast media to the production industry. Unfortunately the Federal Government has not yet moved to modify this legislation, even though the CRTC has seen the validity of this proposal and recommended this procedure.

I believe that the advertising industry generally has demonstrated responsibility by a continuing increase in the percentage of commercials oriented to Canadians produced in Canada, and in fact has reached a level significantly above the percentage of Canadian content contained in the regulations.

This and other examples of corporate responsibility are indications only of a trend. I am convinced that we will see a continually larger percentage of commercial production in Canada, but I fear that a regulation in an area which clearly does not require a regulation might at this time be counter-productive for the entire production industry. Much of our progress in developing a distinctively Canadian culture has been by virtue of a commitment to quality and excellence as opposed to quantity, and a substantial commitment on the part of private enterprise to the objectives and aims of the Broadcasting Act, as well as the private sector's investment in the production industry.

The example quoted in Senator Sidney L. Buckwold's speech is a good one. If in fact Merrill Lynch were required to produce or reproduce a commercial on which

they have already spent nearly $100,000 for use on the Canadian media, it is my conviction that they would be satisfied with the off-air and cable exposure of that commercial via the various border television stations, rather than increase the per unit cost of exposure by virtue of the increased cost attributable to the creation to the Canadian copy of such a commercial. This would result in an increased flow of media dollars to the U.S. border stations and a reduction in income available for application to production by the Canadian broadcast media.

It is completely understandable that the representatives of Canadian television and radio artists and the representatives of Canadian commercial production companies should be anxious to see a regulation which would enhance their immediate financial prospects. However I must suggest that their posture is short-sighted in view of the fact that the predominance of all commercials utilized in Canada are in fact designed for and by Canadians and produced in Canada.

I trust these general comments will be of use to the Committee in its deliberations.

Respectfully submitted,

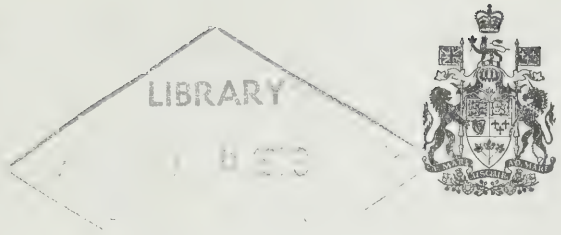
Murray Chercover,
President & Managing Director.

Published under authority of the Senate by the Queen's Printer for Canada

Available from Information Canada, Ottawa, Canada.

Government
Publications

CAI Yc 17
T23



FIRST SESSION—TWENTY-NINTH PARLIAMENT
1973

THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING SENATE COMMITTEE ON

TRANSPORT AND COMMUNICATIONS

The Honourable Maurice Bourget, P.C., *Deputy Chairman*

Issue No. 5

THURSDAY, JULY 12, 1973

Third and final Proceedings on the examination of radio and television commercial advertising broadcast in Canada

---

(Witnesses and Appendices:—See Minutes of Proceedings)

26501—1

THE STANDING SENATE COMMITTEE ON TRANSPORT AND COMMUNICATIONS

The Honourable J. Campbell Haig, *Chairman*

The Honourable Maurice Bourget, p.c., *Deputy Chairman*

and

The Honourable Senators,

Argue	Langlois
Blois	Lawson
Buckwold	*Martin
Davey	McElman
Denis	Petten
*Flynn	Prowse
Forsey	Smith
Fournier (*Madawaska-Restigouche*)	Sparrow
Graham	van Roggen
	Welch

**Ex officio members*

20 Members

(Quorum 5)

Order of Reference

Extract from the Minutes of the Proceedings of the Senate, Thursday, May 24, 1973:

"The Honourable Senator Buckwold moved, seconded by the Honourable Senator Boucher:

That the Standing Senate Committee on Transport and Communications be authorized to examine and report upon the question of the advisability of steps being taken to ensure that all radio and television commercial advertising broadcast in Canada be completely produced in Canada, utilizing Canadian manpower to the maximum possible extent.

After debate, and—

The question being put on the motion, it was —

Resolved in the affirmative."

Robert Fortier,
Clerk of the Senate.

26501—1½

Minutes of Proceedings

July 12, 1973.

Pursuant to adjournment and notice the Senate Standing Committee on Transport and Communications met this day at 9:40 a.m.

Present: The Honourable Senators Bourget (*Deputy Chairman*), Davey, Denis, Fournier (*Madawaska-Restigouche*), Graham, Langlois, McElman, Petten, Prowse, Smith, Sparrow and van Roggen. (12)

Present but not of the Committee: The Honourable Senators Laird, McGrand and Molgat. (3)

The Committee resumed its examination of radio and television advertising broadcast in Canada.

The following witnesses, representing the Canadian Broadcasting League, were heard by the Committee:

Mr. Gordon McCaffrey,
Member of the Board of Directors;

Mr. Wayne Primeau,
Assistant Executive Secretary;

Miss Lynn MacDonald,
Administrative Officer.

In addition, the Committee heard Mr. Sidney Handleman, M.P.P., Member of the Ontario Select Committee on Economic and Cultural Nationalism.

On Motion by the Chairman of the Committee it was *Resolved* to print in this day's proceedings a letter received by the Chairman from the Institute of Canadian Advertisers. It is printed as Appendix "A".

At 11:55 a.m. the Committee adjourned until 3:00 p.m.

At 3:00 p.m. the Committee resumed.

Present: The Honourable Senators Bourget (*Deputy Chairman*), Buckwold, Denis, Forsey, Fournier (*Madawaska-Restigouche*), Graham, Langlois, Martin, McElman, Petten, Prowse and van Roggen. (12)

Present but not of the Committee: The Honourable Senators Carter, Inman, Lafond, Laird, Lapointe, McGrand, Molgat and Neiman. (8)

The following witnesses, representing the Canadian Broadcasting Corporation, were heard by the Committee:

Mr. Lister Sinclair,
Executive Vice President;

Mr. Ronald C. Fraser,
Vice President, Corporate Affairs;

Mr. Jack Trower, Director,
Sales Policy and Planning;

Mr. Norn Garriock, Managing Director,
Television Engineering Services Division;

Mr. Raymond David, Vice President and
General Manager, French Services Division.

After the presentation by the above group, the Committee heard the following witnesses, representing the Canadian Radio-Television Commission:

Mr. Pierre Juneau,
Chairman.

Mr. Ralph Hart, Manager of Radio-Television
Development, Planning and Development Branch.

On direction of the Chairman of the Committee the Brief submitted by the Canadian Association of Broadcasters and letters from the Canadian Broadcasting Corporation and from Century II Studios Ltd., are included in this day's proceedings. They are printed as Appendices "B", "C" and "D".

At 5:45 p.m. the Committee adjourned to the call of the Chairman.

ATTEST:

Denis Bouffard,
Clerk of the Committee.

The Standing Senate Committee on Transport and Communications

Evidence

Ottawa, Thursday, July 12, 1973

The Standing Senate Committee on Transport and Communications met this day at 9.30 a.m. to consider the question of the advisability of steps being taken to ensure that all radio and television commercial advertising broadcast in Canada be completely produced in Canada, utilizing Canadian manpower to the maximum possible extent.

Senator Maurice Bourget (*Deputy Chairman*) in the Chair.

The Deputy Chairman: Honourable senators, for the benefit of those who were not here early, I received a call this morning telling me that Senator Buckwold had to be taken to the hospital last night. Exactly what is the matter, I do not know. His secretary told me that she was going to the hospital and she would report later. I hope, like you, that it is nothing serious and that he will soon be back with us.

Now, before hearing our witnesses this morning, there has been some discussion about the Institute of Canadian Advertising, and I wonder if I could table a letter I have received from the president of the Institute of Canadian Advertising. Is it agreed?

(For text of letter see Appendix "A")

Hon. Senators: Agreed.

The Deputy Chairman: I also received yesterday a study on foreign ownership in the advertising industry which was sent to me by the Chairman of the Select Committee on Economic and Cultural Nationalism, from Toronto. Unfortunately, Mr. Rowe told me he could only send me one copy at this time because he had no other copies available, but as soon as he has he will send copies to all members of the committee. If any one of you would like to look into it, I have it in my office and you can see it in any time you wish.

Senator Prowse: What was that?

The Deputy Chairman: That is a study being made, at the request of that Select Committee in Ontario, by Kates, Peat, Marwick on foreign ownership.

Senator Prowse: Yes.

The Deputy Chairman: Senator Davey yesterday asked if that report had been received, and we just received it yesterday afternoon.

Our first witness this morning is the representative of the Canadian Broadcasting League. I am told that unfortunately the president of that organization, Dr. F. B. Rainsberry, could not be here this morning. I am told he may be in later, but in the meantime we have with us a representative of that organization, Mr. Gordon McCaffrey, who is a member of the Board of Directors, and Mr. Wayne Primeau, who is the Assistant Executive Secretary, and Miss Lynn MacDonald.

On behalf of the members of the committee, I would like to welcome you and thank you for having accepted our invitation. Do you intend to read the brief that you have submitted to us, or to comment on it?

Mr. Gordon McCaffrey, Member of the Board of Directors, Canadian Broadcasting League: Mr. Chairman and honourable senators, you have received a copy and I presume you have had an opportunity to glance through it. I will just make a few remarks on it and be available for questions.

The Deputy Chairman: Is this agreeable to the members of the committee?

Hon. Senators: Agreed.

Mr. McCaffrey: I would like to say at the outset that many of you are familiar with the Canadian Broadcasting League from previous meetings of this and other parliamentary committees. It is an organization founded about 30 years ago and one of the founders of the league is Graham Spry, now a resident of Ottawa after a brief sojourn in Great Britain, and he is known to many of you.

As your chairman mentioned, the chairman of our Board of Directors is unavoidably detained. He has asked us to be present as well.

The League is an affiliation of associations and individual members. At the present time we include in our membership 12 national and regional organizations and a number of individuals.

We have been primarily interested in supporting the principles of the Broadcasting Act. Therefore, we support such policies as the following: a national broadcasting service comprising both public and private elements; the principle that all policies regarding broadcasting in Canada should reflect the fundamental principle that the airwaves are the property of all Canadians. We believe in Canadian ownership of the mass media, particularly the broadcasting field. We would like to see the development of a strong and viable Canadian film and television production industry. In fact, it is related to our discussions today. We would like to promote opportunities for writers, performers, actors and musicians.

We think that the choices for this committee on the question of commercials on radio and television are threefold: We could continue to expose ourselves to a large proportion of advertising which has been produced outside of Canada; we could implement a quota system which would assure that some commercial time would be produced by Canadian performers and production studios;

or we could seek a regulation which would require that all commercial advertising on radio and television be produced in Canada and make use of Canadian talent resources.

We recognize the economic necessity of commercials in the broadcasting industry at the present time. This is true to a considerable extent for the Canadian Broadcasting Corporation, and it is entirely true for the private sector in broadcasting. We take the position that if we must pay for commercials, and we pay for them in the goods we buy, we think that the commercials we watch and listen to should be Canadian commercials. We suggest that there are cultural differences between Canada and foreign sources where commercials may be produced, and if we are going to have commercials as an economic necessity in the broadcasting system, then these commercials should also reflect Canadian culture.

We point out on page 4 of the brief that to a large extent Canada has already been absorbed into the United States advertising market. Advertisers talk about a spill-over market when they speak of Canada. In order to emphasize our own character and identity, and to ensure that we do not become American citizens by default, we say that Canadians must be able to exercise some editorial discretion in the area of commercial content as well as in the area of program content. The Canadian public has already demanded and has been given the right to a certain percentage of Canadian content in production time. We feel it is logical that the same kind of regulation should be applied to commercials.

We consulted the Institute of Canadian Advertising for background information to support our point of view, and found that the information available there was not entirely satisfactory to us.

At the bottom of page 4 and at the top of page 5 we suggest that more detailed and accurate figures on the status of Canadian content in commercials should be obtained, and it is possible that a committee of your stature could obtain this information. We realize that companies which make use of commercials produced in the United States feel they have good economic reasons for doing so, and their reason is probably related to the profit motive. We do not believe that it is of necessity related to the talent that is available. We believe that Canada's talent is competitive with international talent, and that if advertisers want to use commercials, then Canadian talent should have access, through fair competition, to these advertisers. We suggest that they do not have fair competition in their industry at the present time. There is a built-in advantage for American advertisers. A Canadian company has to spend a considerable amount of money on its own commercial production to make a television or radio commercial comparable to one imported into Canada by a United States based corporation for use by its subsidiary or affiliate.

We suggest that any action by the Canadian government to restrict the use of imported commercials would not deter major advertisers from using commercials in the Canadian media; they would merely have to adopt a different procedure.

Our brief estimates that in the neighbourhood of $15 million a year in advertising revenue is being spent in the United States on the border stations. It has been a sore point with many Canadian radio and television station owners and operators. It is also a sore point to Canadian actors and production technicians who see this investment going into a foreign production house rather than being invested in Canada.

The CRTC's Canadian content regulations have resulted in an increase in the work available for Canadian professional performing talent and for the production industry. Nevertheless, television and radio commercials represent a very substantial source of income to all performers and film makers. I understand that ACTRA representatives were here yesterday, Mr. Charman, and that the information received from them is that approximately one-quarter of the gross income of the professional talent pool in Canada comes from commercials, and if this were not available many of them could not afford to stay in the industry and would not be available for program production.

We believe that a regulation, such as the regulation covering Canadian content, be recommended so that Canadian artists and production houses will be employed in the making of all commercials used by Canadian television and radio stations. At the present time we feel that commercials produced in foreign sources are being dumped freely on the Canadian market, and those who are in the production industry here share the same kind of resentment which is exhibited in other industries where goods are dumped in the Canadian market without any reference to the production costs in the country of origin.

So, the Canadian Broadcasting League urges your committee to act to ensure that all commercial content of radio and television programming be produced in Canada and should utilize Canadian resources to the greatest possible extent to reflect the taste and the character of Canadians, and to provide increased job opportunities.

This is the general content of our submission, Mr. Chairman.

The Deputy Chairman: Thank you very much, Mr. McCaffrey. Would you like to add something, Mr. Primeau?

Mr. Wayne Primeau, Assistant Executive Secretary, Canadian Broadcasting League: No, Mr. Chairman, I think Mr. McCaffrey has covered what we want to say.

The Deputy Chairman: Now we are open for questions, and I should like this morning to ask the first question myself. I would like you to tell me, Mr. McCaffrey, if the Canadian Broadcasting League represents all the provinces.

Mr. McCaffrey: The Canadian Broadcasting League is an open, voluntary society. It is open to anyone who will support its stated declaration of policy. The major policy is that the Canadian Broadcasting League supports the fundamental principles of the Broadcasting Act. Broadcasting is a public resource, and broadcasting should maintain programming to both language and culture groups in the country and should have balanced programming.

Among our members are national and regional organizations. I myself am a representative of the Canadian Labour Congress, which has membership in all provinces and the territories. The Canadian Labour Congress has adopted a broadcasting policy and convention, which also supports the principles of the Canadian Broadcasting

League. Other national organizations include the Canadian Federation of Agriculture, the Canadian Association of Consumers, the Canadian Council of Women and the co-operative unions. We have other regional and national organizations. We also have individual members, who are affiliated to the broadcasting industry, or merely and purely audience members of the association. They have no business or professional contact, but they do have an audience or consumer interest in broadcasting. I would have to refer you to Mr. Primeau or Miss MacDonald who might be able to inform you as to whether every province is associated with us by individual members.

The Deputy Chairman: Is the province of Quebec represented in your organization?

Mr. McCaffrey: Yes, Mr. Chairman. We have regional broadcasting associations, such as the Normandie group, which is concerned with consumer access to cable and local television facilities. We also have association with National Film Board local units through our league in Montreal.

Mr. Primeau: Our board of directors. which was elected at our annual meeting in March, is representative of all regions of Canada. We have members of the board in Victoria, Vancouver, Montreal and New Brunswick. At the moment, due to our present situation, it is pretty heavily central Canada-oriented, but there are members in Saskatchewan and the western provinces. The members of the board of directors, from these various organizations, are elected at the annual meeting. Some members are associated with the University of British Columbia and others were with the National Film Board in fairly senior positions. They are interested in promoting the national work of the league.

Senator Graham: May I ask for a little of the background as to why and how the Canadian Broadcasting League was established and the number of full-time employees?

Mr. McCaffrey: The Canadian Broadcasting League was organized in 1932 in order to protect the public interest in the industry which was just being founded at that time, namely the radio industry. In approximately 1928, Canadian Marconi Company and others in Montreal, and later in Toronto and Windsor, were making application for broadcasting licences. A group of volunteers associated with the co-operative movement and the CCF decided that it would be good public policy to have legislation at the national level to protect the public interest, the private interest being taken care of through individual applications. There were obvious international ramifications with respect to sharing the airwaves with our neighbours and also between cities and provinces. There were the other considerations, of the importance of broadcasting in the national interest for purposes of national unity and identity. It was this basic interest which caused a group of perhaps only 16 or 17 on a national basis, at that time mainly in Saskatchewan, Ontario and Quebec and later in British Columbia, to join together when they were capable of doing so and to influence the Government of Canada to introduce legislation in favour of a national policy. This group continued until the first Broadcasting Act was introduced in 1936, which established the CBC.

The central driving spirit of the league throughout this period has been Graham Spry, who until last year was the chairman of our board of directors. Mr. Spry was absent from Canada for a number of years, as the representative of Saskatchewan in the United Kingdom. The league was not highly active throughout World War II and into the early 1950s, but was revived with the oncoming of television. In the last year and a half we have been encouraged by the Department of the Secretary of State to establish ourselves on a national basis with the greatest possible audience and consumer participation in our membership.

Senator Davey: What is the total membership of the Canadian Broadcasting League?

Mr. Primeau: At present the total membership is approximately 200—that is, individual members, not the national organizations which have been the primary part of the league in the past. However, since the Secretary of State has requested us to establish this national organization, we are in the process now of developing such a membership.

Senator Davey: But you have 200 individual members?

Mr. Primeau: We have approximately 200 individual members.

Senator Davey: Is a member of the Canadian Association of Consumers automatically a member of the Canadian Broadcasting League?

Mr. Primeau: No.

Senator Davey: So it is a corporate membership?

Mr. Primeau: It is a separate membership.

Senator Davey: Do these organizations subscribe to your views? You mentioned a study made by the CBC. I am aware of that study and substantially the views of the Canadian Broadcasting League. Is that true, particularly of the Canadian Association of Consumers?

Mr. Primeau: All individual, affiliate or corporate members—although we do not use the word "corporate", but for purposes of identification we will use it now—are obliged to subscribe to the League's declaration of policies and principles. That would include the Consumers Association of Canada. Should a conflict of interest between their positions and ours later develop, it would be incumbent upon them to withdraw.

Senator Davey: If I join the CAC, will I be informed of the views of the Canadian Broadcasting League?

Mr. McCaffrey: This would be a matter for the CAC to determine. We do not do it.

Senator Davey: You would not know, in other words?

Mr. McCaffrey: No.

Senator Davey: My point is to simply observe that others present are also members of the Special Senate Committee on Mass Media. Some were disappointed with the presentation of the Consumers Association of Canada. I have all that material at home, and the association continues, it seems to me, to ignore the fact that its members are consumers of mass media. I wonder why you do not

carry on a little more missionary work with the Consumers Association of Canada in order to alert them to this very legitimate area of consumer interest. Would you comment on that?

Mr. McCaffrey: We have two major methods of communication with our members and our potential audience. We believe that potentially every Canadian who listens to radio and who listens to and watches TV is interested in what we are doing. Either he is for us or against us; he cannot be neutral.

Senator Prowse: He may not know what you are doing.

Mr. McCaffrey: No. So we have at least two ways of communicating. One is through our regular publication, which we call *Téle-nation,* published in the two official languages, which goes to all members, and to some others who are not members but whom we are trying to get as members. We also hold conferences periodically. We would like to hold more conferences...

Senator Davey: I want to know what you do to wake up the CAC.

Mr. McCaffrey: We invite the CAC to come to our conferences.

Senator Davey: Do they come and participate?

Mr. McCaffrey: Yes, they do.

Senator Davey: And did you go to their conference out at Carleton?

Mr. McCaffrey: I did not.

Senator Davey: Was the broadcasting league represented at that conference, and did you raise the roof and say, "You people are not doing enough about media?"

Mr. McCaffrey: Mr. Primeau will add to my comments on this.

Mr. Primeau: If I could explain something, the league itself, although it has this history of 40 years, is in the process right now of developing. This is actually since the last year or since we got our new board of directors. This is the second brief which has been prepared. Organizations, such as the consumers association and others, the individual members, probably do not know about the league. This is one of the problems and one of the things that we are trying to overcome by our reorganization, by the revamping of our publicity propaganda apparatus, and also our information retrieval.

What you are saying is true. The consumers association, and probably people in the Canadian Labour Congress and in various other organizations, do not know exactly what the league is doing. We are now in the process of talking to these people and trying to make the membership aware.

There is one other thing. The consumers association is primarily concerned with the consumption, the product, aspect, and the idea of the Canadian Broadcasting League, as we see it, is to be a similar type of organization for broadcasting. I believe this is one reason why the Secretary of State has shown an interest in our organization.

Senator Davey: I do not disagree with you on that. The point is that the people are consumers of media, and the broadcast industry in particular lives off, feeds off, the apathy with which everybody regards the media. They complain about it but they do not do much about it. You people are trying to do something about it. If the consumers association is associated with you, I think you should prod them into some kind of action. Do you receive money from the federal government?

Mr. Primeau: Yes, we do, sir.

Senator Laird: What other money do you get?

Mr. Primeau: The other money comes strictly from membership or from grants from the various organizations that are members, such as the Canadian Labour Congress.

Senator Graham: Is it a fair question to ask, Mr. Chairman, how much the Canadian Labour Congress would put into the Canadian Broadcasting League?

Mr. McCaffrey: Yes, Mr. Chairman. The affiliate members last year had a fee of $100. The Canadian Labour Congress gave $500. It was one of the larger contributions. You did not ask it, but I would like in fairness to say that the Canadian Federation of Agriculture provided office space to the league for over a year. The co-operative unions in Western Canada gave approximately $300. Other organizations of this national character limited themselves to $100. Individual members are paying $10.

Senator Graham: I asked you earlier, but I do not think you answered it. What is the number of full-time employees that you have?

Mr. McCaffrey: I think Mr. Primeau could answer that.

Mr. Primeau: We have five employees now. If I can come to the historical part of this, last year there was one volunteer, and there was one, shall we say, very poorly paid or part-time secretary who worked full time. This is when the federal government came in to help the league. This was last year. They gave us a grant to get us, as they said, "on our feet." They felt there was a need for this organization, so the federal government became involved last year for the first year. We have taken this year to give the organization a basis, to get it incorporated under the Canada Corporations Act, which it has never been before, get a board of directors, write up by-laws, et cetera. We now have a full-time staff of five persons, which includes myself as an assistant director, an information officer, a publications officer, and two secretaries. It shows us where we are in the development, because we do not have an executive director yet and the board is looking for one.

This is where we stand now in our development. So you can see that primarily we are doing the ground work for this organization, which has existed as, and has been, primarily a volunteer organization, strictly voluntary, being supported by the people who did the work in Ottawa, to turn it into some viable organization that can work today in Canada across the country. There are a lot of people who are interested, right across to British Columbia. For instance, we had a short meeting in Vancouver on June 8, I believe it was, with various persons connected with the media, and universities and other public bodies in the British Columbia area, at the University of British Columbia, to get the league known to

these people and to start getting an input into the league itself.

Senator McElman: How much was the federal grant?

Mr. Primeau: The first federal grant was $45,000.

Senator McElman: Are you looking for an annual grant?

Mr. Primeau: No. That is a touchy thing, depending on what the board of directors wants. The league feels, and the members feel, that the organization itself should primarily be supported by members' fees. We were talking about apathy. To get an organization known across the country so that people believe that it has a function that it can fulfil, takes money which the individual members do not have. Hopefully we will have a grant this year, and the Secretary of State has said that it will possibly, over the next couple of years, get us on our feet and get us into contact with all these other organizations, to have our own financial basis, and then they will pull out. But we do not want an annual grant from the government.

Senator Laird: Is ACTRA a member of the CLC?

Mr. McCaffrey: Yes. It is an affiliate of the CLC.

Senator Laird: We have heard a considerable quantity of evidence on this matter of a complete ban on importation of commercials; and, of course, naturally, ACTRA is all for that—a complete ban. On the other hand, we have had witnesses who have indicated that the goal should be—in one instance they said 75 per cent Canadian made commercials. Another witness said 80 per cent, as being a realistic percentage. What would be your comment on that, since you appear to favour a complete and total ban on the importation of all commercials?

Mr. McCaffrey: We have supported a total ban on the basis that commercials reflect the cultural background of Canada, and we do not want somebody else's culture foisted on us through a commercial message. We have said this in a different way in another place with respect to advertising on children's programs on TV. We do believe that Canadian society is different, and those who made that declaration said they wanted to keep it different. They felt that commercial messages were sometimes more overpowering for transmitting cultural messages than was the content of the program itself.

Senator Laird: I will come to this matter of culture in a moment. One of the witnesses said, for example, that you simply could not have a blanket ban because conditions differed. He went on to explain how they differed. I will not go into detail, except to say that I took the liberty of drawing to his attention one situation in which, of course, I am extremely interested, and that is Windsor. I presume that you are aware that there at least one station is completely, or almost completely, dependent on American viewers, and therefore American advertising, for its existence. Being perfectly fair about it, would you consider that that would constitute an exception to the rule which you state?

Mr. McCaffrey: I am afraid it is a contradiction of what I have said.

Senator Laird: In other words, you would let them fall by the wayside. Whether it is so or not, they say in a letter filed with the committee that if there was a complete ban on the use of American commercials they would be out of existence.

Mr. Primeau: Perhaps I could speak to that, as I used to live down there. Is it proper to quote a commercial?

Hon. Senators: Certainly.

Mr. Primeau: Perhaps some of you will remember the Wrigley's spearmint gum commercial which appeared in Canada. It used to have the Wrigley's package through a map of Canada. The station in Windsor always had that same commercial, but it was the American one with the package through a map of the United States. With respect to a station such as that, I cannot see that there would be any harm, if they are going to sell this Wrigley's gum to an American audience, in them seeing it through a map of Canada. However, where they are going to advertise strictly for, let us say, a Detroit department store, that, I do not think, comes under it. What we are talking about, really, is about Canadian companies and Canadian subsidiaries of American companies advertising in Canada to Canadians. If for instance, Hudsons of Detroit wishes to have an advertisement on this Windsor station, that, I think, would probably be outside the bounds of what we are talking about. Most of the commercials that this station carries, if they are about national products such as automobiles, let them see a Canadian commercial. If they do not see a great ad from the United States and they see one from Canada, it still gets the point across, if what they are saying about the General Motors car is possible. If they are going to advertise for a strictly American product to an American audience, that would be, to my thinking, a different situation.

Senator Laird: In that instance they would be justified in using an American commercial.

Mr. Primeau: Yes.

Senator Laird: The cultural aspect has been the subject matter of considerable discussion during the last two days. It is always of interest to me to find out the views of witnesses as to how and in what way they consider Canadian culture is, somehow or other, going to be advanced by the use of exclusively Canadian-made commercials? Is there that much of a difference between our culture and the American culture?

Mr. McCaffrey: I will try to answer your question as a representative of the League. If I answer it personally, I would have to tell you that I listen to and watch commercials as little as possible. In fact, I have a regular habit of turning them off.

There are some commercials which I can think of which are international as far as sound, voice, music, and so forth, are concerned.

Senator Davey: What would be an example of that?

Mr. McCaffrey: A beer commercial.

Senator Davey: Do you have a particular one in mind? Are you thinking of the Molson commercials?

Mr. McCaffrey: Let us take the Molson commercial where they show the skiers coming down the hill doing loop-the-loops. That is the best part of the commercial as far as I am concerned.

Senator Prowse: A lot of people are intrigued by that one.

Mr. McCaffrey: That commercial could be produced for a northern United States audience, and I think it could also be shown in Europe, if Molson's were selling their product over there. The beauty of that commercial is that it does not have a distinctly national, cultural attraction. It is universal in its appeal.

Senator Laird: But you do feel, apparently, that other commercials do have a strictly national flavour.

Mr. McCaffrey: Yes. However, my knowledge of commercials is not so great as to allow me to give you examples to illustrate my point. I do occasionally watch the Johnny Carson show from New York where they have, perhaps, three or four commercials in a row. I sometimes make an effort to watch them in an attempt to be fair, I tell myself, to what the advertiser is telling me. I cannot stomach too many of them. I find that most commercials turn me off because they are hitting me over the head from the time they come on until the time they go off. Whether that is American culture or Canadian culture, I am not prepared to say.

Senator Laird: I think Mr. Primeau wants to say something.

Mr. Primeau: If I may. I believe that if we get into a discussion on the differences between the cultures, there are many differences that can be pointed out. For example, the attitude towards constitutions, the attitude towards police, attitudes towards guns, and so forth. The average Canadian, for instance, would not want to own a pistol whereas I, myself, have many American friends who collect automatic weapons. Another example would be the attitude of Canadians towards the Royal Canadian Mounted Police. You would never hear anything, as was heard on the CBC regarding the RCMP, in the United States towards the FBI or the California Highway Patrol.

Senator Prowse: Yes, we have had a program on the RCMP.

Mr. Primeau: Yes, but I am saying that you would never hear the Americans, as was the case just recently with Canadians on the CBC, saying how great their national police force was or how great the treasury officers were, because they do not look on the FBI or treasury agents in that way.

Senator Laird: Especially in view of what has happened recently.

Mr. Primeau: That is right. There are many different attitudes in the U.S. than there are in Canada. However, I do not think that is the main thing. One of the main things is that the American advertising agencies assume a lot. An example of that would be the Crisco commercial which has the Virginian accent. It is sort of funny to me, but obviously it does offend some people. I watch commercials to see how interesting they are. I do not go out and buy those types of things. That commercial, I think, is an insult to some Canadians, I am sure, to think that Crisco assumes that the average Canadian housewife or the average Canadian is like a Southern Virginian.

Senator Davey: We dealt with that commercial yesterday. Senator McElman likened him . . .

Senator Prowse: He said that any fellow who would get on TV and tell you how good his wife's piecrust is is a nut.

Senator Laird: That was the import.

Senator Davey: And he instructed his wife not to buy Crisco under any circumstances.

Senator van Roggen: Perhaps if their sales go down they will change the ad.

Mr. McCaffrey: Perhaps it was because his wife was a tart.

Mr. Primeau: This is what the league is trying to get at. It is not the fact that American commercials are bad per se, but rather the fact that there is a difference in Canada, and the Canadian government has said this in the Broadcasting Act. The Canadian government decided that we would have a Canadian network. It would be much cheaper, I am sure, for Canada to have ABC, CBS, and NBC, and eliminate the CBC and let the employees of CBC get jobs in the States, which they could and probably at higher salaries. However, we decided, through Parliament, that Canada is different, and the fact that we have decided this indicates that there must be a difference. If there is no difference between Canada and the United States, then the whole idea of Canada is ludicrous. Since Parliament exists, I accept it, because that is the law.

Senator McElman: Mr. Chairman, may I ask Miss MacDonald a question?

The Deputy Chairman: Yes.

Senator McElman: Miss MacDonald, I am sure you watch some American programs with strictly American-produced advertising and you watch some Canadian programming with strictly Canadian-produced advertising. Do you find any difference in the quality of the approach to the female and to the housewife? Do you find that one regards the recipient of those advertisements as anything less of an idiot, whether it be produced in the U.S. or in Canada?

Miss Lynn MacDonald, Administrative Officer, Canadian Broadcasting League: On the average, I would say no. However, as far as commercials produced in Canada by Canadian agencies, we do, at least, have the advantage of being able to get at the company, knowing that they are dependent upon Canadians to buy their products and, therefore, they are much more likely to respond to a complaint regarding a particular ad. As Canadian companies they would be much more responsive than an American parent company would be. I know from personal experience of complaints about ads that I have had much more reasonable response from Canadian companies than from American companies.

Senator McElman: Do you find an appreciable difference between the two in the quality of the advertising?

Miss MacDonald: I find the Canadian ads much less slick, and perhaps infinitely less offensive.

Senator Prowse: Miss MacDonald, I would have agreed with you some time ago, but last night, because of what I had been hearing in this committee, I took the opportunity to watch TV for a while, which was why I had an opportunity to sit at home. I decided that I would watch the ads to see whether I could tell whether they were Canadian or American.

Senator Laird: You just wanted to see the ball game.

Senator Prowse: No, I did not see the ball game. I watched the two good shows! I watched the other Ottawa station, and I found it very difficult to distinguish between the two. I was trying to conduct a little survey of my own as a watcher to determine whether the ads were Canadian or American. There were some that I could tell were American. There were some that were obvious adaptations, that had been adapted for use in Canada. However, there was not any cultural difference that I could see. On the whole, with one or two exceptions, it was very difficult to decide whether or not it was a Canadian ad.

For instance, take the Canadian ads, which I imagine are made in Canada, put out by the brewing companies. I have not seen American brewing ads that began to compare, for quality and slickness, with the job the Canadians are doing. As Mr. McCaffrey said, they do well internationally.

Looking at them carefully today, I do not think it could be said that the American ads are slicker than the Canadian ads, with the exception of the nationally produced ads. Those produced by national advertisers, who have a large amount of money to spend and can afford to have a professional job, can certainly be distinguished from the local ad, where Joe stands up and says, "I've got a place where you can really buy a car cheaper." Why he does that I do not know, because having listened to Joe you are sure of one thing, and that is that it is the one place you will not go to buy a car. Do you agree that that would be the situation today?

Miss MacDonald: Yes, I would agree in that particular instance. I was not thinking specifically of commercials when I referred to slickness.

Senator Prowse: There are others.

Miss MacDonald: Certainly on the national level, whether the commercials are American or Canadian, the agencies have far more money to pour into producing the commercial, and they are generally far more entertaining. In that sense they are better than local ads. If you are saying that there is no cultural difference in the majority of commercials that you have watched, I would disagree with that. I have made the same survey, and I do find that difference.

Senator Prowse: I looked at only two programs last night, so I agree it was pretty limited.

Miss MacDonald: If you say that there is no appreciable difference...

Senator Prowse: In the quality.

Miss MacDonald: If there is really no difference in quality between Canadian and American nationally produced commercials, presumably there is no difference in the amount of money that on the national level a Canadian agency could use to sponsor a program compared with an American agency, so why have the American?

Senator Prowse: That is precisely the point. I am glad you brought it out. Thank you.

Mr. McCaffrey: I think, that perhaps the subtle foreign influence on our culture through commercials is through the melting pot concept of the United States. You get a commercial that appeals to the mass; that is the American point of view; although for diversity they sometimes go to the lady from Virginia or the southern senator. The Canadian cultural emphasis is on multiculturalism, so if our commercials were really going to represent the Canadian culture we would promote commercials that appeal perhaps occasionally to Ukrainians, Germans or Portugese. We do have the French language commercial, which takes into account a cultural difference, but if we are going to have commercials, why cannot we also have commercials to appeal to people in different parts of the country based on their cultural interests?

Senator Prowse: Going back to the Crisco ad, some time ago there was a gentleman from Virginia, and I am glad I missed him, although I do not mind the accent. I decided that the man in the last Crisco ad I saw was a Pole, and it seems to me that they are doing the kind of thing you are suggesting. In other words, melting pot or no melting pot, they are not just taking a Boston accent and saying that it will be for everybody. They are obviously making a pitch so that the total effect will be to hit different groups in the United States. To some extent that hits people here. If it is all done in Brooklynese, or something like that, that has no relevance in Canada. If they use somebody with a trace of a European accent we would be in bad shape if we objected to it in this country because of the cultural differences.

Senator Laird: What does your league do, if anything, about developing Canadian talent.

Mr. McCaffrey: We make representations to the federal government to protect the Canadian Broadcasting Corporation; that is, protect it better than it is now, and attempt to make it better. The Canadian Broadcasting Corporation has been the main source of job opportunities for Canadians. We supported and promoted efforts to increase the Canadian content in programming, for both the public and the private networks. We assist efforts by organizations like ACTRA, which are directly interested, to do whatever they can to help themselves.

Senator Laird: They are doing a pretty good job, according to them yesterday.

The Deputy Chairman: I would remind honourable senators that we have another witness to hear this morning. It is already twenty-five minutes to eleven. Would you agree to allowing another 15 minutes to question these witnesses, and then hear from Mr. Handleman? Is that agreed?

Hon. Senators: Agreed.

Senator van Roggen: A little earlier you made a remark to the effect that as far as your objectives and this brief was concerned, people were either against you or

were for you. Questions were being put to you as to whether or not your associate members shared your views. I assume by that remark that you mean those objectives set forth on page 1 of your brief. Am I correct in that?

Mr. McCaffrey: Yes, sir.

Senator van Roggen: That is, "a national broadcasting service comprising both public and private elements," and so on. You do not mean by that remark that they had necessarily to subscribe to all of the conclusions you arrive at in your brief?

Mr. McCaffrey: That is correct.

Senator van Roggen: I think I could well subscribe to your objectives on page 1, without necessarily subscribing to your conclusions.

Mr. McCaffrey: That is right. This is the difficulty with any representative organization, that whoever is spokesman may tend to give his own views which may depart from policy; and there is even the danger of making policy while sitting here—which may be countermanded by others later. That is the difficulty.

Senator van Roggen: I just want to deal for a moment with this question of absolutism, that is, a total, 100 per cent Canadian content in all advertising, as opposed to a substantial percentage, 75 per cent or something like that, suggested by witnesses.

Senator Prowse: It does not say that.

Senator van Roggen: Doesn't it?

Senator Prowse: On page 8—the conclusions.

Senator van Roggen: You say on page 8:

> The Canadian Broadcasting League, therefore, urges that this committee act to ensure that all commercial content of radio and television programming be produced in Canada...

Does not that mean all?

Senator Prowse: It suggests utilizing Canadian resources "to the maximum possible extent".

Senator van Roggen: Even in Vancouver?

Senator Laird: It did not mean all in Windsor?

Senator van Roggen: No, I did not mean all in Windsor, but this is what I would like to get to, because I do not think there is anyone in this room who would not like to encourage as much Canadian content as is possible in advertising, on Canadin media. What we re really arguing about is whether we put an electronic pigfence up and get ourselves hidden behind it so that we can say it is 100 per cent, or whether or not we should aim for something that can be accomplished without going to such extremes and maintain the morals of society.

We had evidence yesterday and witnesses yesterday also agreed that statistically the information is very poor at the moment, and certainly it will be very helpful when the CRTC, in conjunction with the industry, completes its survey and comes up with some definite figure that we can all look at. I do not think too many people should make too many confirmed judgments until those figures are available.

Pending that, we had evidence that in the Toronto area now approximately $6 million worth of advertising commercials were being produced for the American market in Canada. Whether it is five or six, those were approximate figures. There was another estimate that that might be as much as 20 per cent of the total production going on in the Toronto area at the moment being used for export.

If, for the sake of argument, we arrived at a point where Canadian advertising was, say, 75 per cent produced in Canada and 25 per cent produced in the United States, and that the value of the 25 per cent that was being imported was being equalled by the amount being exported, bearing in mind the net production in Canada from the point of view of Canadian talent—not only the actors but all the other people engaged in the industry—what would your reaction be to that, rather than having that $6 million of an export cut off?

Mr. McCaffrey: I think that at present your example is hypothetical but, taking it on its face value, the logic is in your favour.

Senator Prowse: The evidence is that it is just about there now.

Miss MacDonald: Could I say something?

Mr. McCaffrey: What we seem to be facing is that commercials are being produced for the major United States market, the major market in North America, at prices which are compatible with that market; and then too many of these commercials, relative to the size of the Canadian opportunity, are being dumped in Canada at the cost of making a duplicate. We think this is the problem we are facing. Speaking from my personal background, I am in favour of free trade, but where you have a dumping situation you do not have free trade.

Senator van Roggen: It may be that there should be a dumping duty put on commercials, or an import tax.

Mr. McCaffrey: It would have to be high enough to make it give some incentive to producing commercials.

Senator van Roggen: I suppose the same thing could be said for books and magazines and so forth.

Mr. McCaffrey: I think it is true.

Senator van Roggen: Which would be dangerous.

Senator Prowse: It depends on what you mean.

Mr. McCaffrey: In books and magazines we have already seen this happen, for many years.

Senator van Roggen: We had better not get on to that subject.

Miss MacDonald: You were saying that the percentage of commercials now produced in Canada seems fairly high?

Senator Prowse: No. What I said was this. Actually, the figures are that 60 or 70 per cent of commercials being used on television, on the figures we have, are

being produced in Canada now for use in Canada; but the estimate was that somewhere between $6 million and $8 million would be the additional income that would be available to Canadians if all the commercials which are now being used, which are produced in the United States and then brought in on a dumping situation, which I agree you could call it, were produced here.

But the other evidence is that we are making in Canada, for use in the United States by American advertisers in that country, or maybe in other countries, approximately $6 million worth in Toronto and Vancouver studios—about $6 million altogether. These figures are not entirely precise. In other words, it would look like a trade-off that may or may not be to our advantage.

To be fair about it, the point was made that, unfortunately, while these are using Canadian technology they are not in a great many instances using Canadian artists, but they are bringing in their own artists. This is where the cultural impact gets there, as opposed to the pure business or economic impact. So, economically, it may be viable for us to leave the thing just the way it is, but we have got to get a lot more information before we can accept the argument that it was culturally viable for us, because of the importation of artists.

Miss MacDonald: I would also point out that that 60 per cent figure is one that we maintain also from the ICA, and that figure pertained only to ICA members and it did not pertain to agencies in Canada who are not ICA members.

Senator Prowse: It is 69 per cent. They told us what it was. It is 25 per cent, or 25 agencies.

An hon. Senator: 24.

Senator Prowse: 24 agencies.

Senator van Roggen: 24 agencies do about 80 per cent of the business. Perhaps I could continue on that.

Senator Davey: I have a suwpplementary question, Mr. Chairman, on this subject. Yesterday one of the big agencies appeared here, or perhaps the day before, and they were advancing the case that it was quite unrealistic to talk in terms of 100 per cent content—or absolutism, the phrase Senator van Roggen used—and they gave some examples. They said there were two reasons why. They said there had to be commercials which had to be done in different geographic locations. The other was that there had to be commercials which had to use "special personalities."

As the directors and executives of the Canadian Broadcasting League, do you think that the Canadian listeners and viewers could survive without commercials done in "different geographic locations" or without "special personalities." Or do you think that these are legitimate reasons to say we could approach either 100 per cent or much closer to 100 per cent? Do you think these are legitimate reasons—special geographic locations, special personalities?

Mr. McCaffrey: If we follow what we said in the brief, we have to say no, but I think that the person who is buying the time should have some options open to him then.

Senator Davey: Then what is the purpose of your brief? Surely that is absolutely inconsistent with your brief?

Mr. McCaffrey: It is.

Senator Davey: Then why did you come here with this brief, if you take that position? That is a waffle. You do not really subscribe to the 100 per cent.

Senator van Roggen: It is not a waffle at all; it is very frank.

Senator Davey: You do not really subscribe to 100 per cent. The conclusion of your brief is that the committee ensures all commercial content, and now you say that that is not your position at all, but that there should be an option.

Mr. Primeau: I feel the brief as it stands, the 100 per cent, is something to work for. It always has to take into account the various things, as pointed out before, such as the trade-off. What we are trying to do is get the best situation possible for the Canadian viewer and the Canadian actor. I would think that people who say they have a special geographical location would have to explain that in more detail to me, because I cannot see what geographical things are not in Canada, except for a desert. We have mountains and everything else. It does make sense.

Senator Davey: The example used was grass at a particular time of the year.

Mr. Primeau: Well, you can make up any situation, you know, like a straw man and blow it down to show that you are correct or to show that this person who is saying it is correct. But talking about culture, it is quite possible that a commercial made in Canada will be the exact same commercial with Canadian actors. It may be the same Crisco commercial, as we pointed out earlier, with an Ottawa Valley person. So actually the cultural differences in this are not that significant. I am trying to phrase this correctly, but what we are trying to do is get the best possible situation for the Canadian actor.

If the committee or Parliament sees that the number of commercials made in Toronto and Montreal for the American market but utilizing Canadian talent is a better trade-off for Canada than having 100 per cent Canadian commercials, then that is probably the best solution. But for us to propose that to you is proposing something that we do not have the facts to go on. So what we are proposing now is something we have looked at, based on the facts at hand, which are very minimal, to try to say what we feel is a possible solution.

Senator Davey: Your position, then, is 100 per cent, if necessary, but not necessarily 100 per cent.

Mr. Primeau: If possible, not if necessary—if possible.

Senator Prowse: Their conclusion is to utilize Canadian resources to the maximum possible extent.

Senator van Roggen: I should like to congratulate the witnesses on being frank on that point, despite what the brief says. You say you wish to pursue or find what is best for the Canadian actor. Do you feel that what is best for the Canadian actor is synonymous with what is best for the Canadian viewing public?

Mr. McCaffrey: The Canadian viewing public has a variety of channels or stations which it can follow. If it wants to see American content it can do so on an American station.

Senator van Roggen: If you live near the boundary.

Mr. McCaffrey: Most Canadians do.

Senator van Roggen: Most, but not all.

Mr. McCaffrey: We are saying that in Canada there should be an opportunity for Canadians to pursue their life goal. If it is in broadcasting, they should have the opportunity. They are not going to have that opportunity unless this solution or this approach to the solution is followed.

Senator van Roggen: If you go to 100 per cent, you will necessarily restrict the choice of people, and I am suggesting that maybe 70 per cent would be the figure. Some people have said we could have 75 per cent very reasonably. I believe there is a point at which a reasonable opportunity is given to Canadian people in that industry to exercise their rights in Canada and pursue their practice and their trade in Canada, but that if for the sake of Canadian actors we deny free access to the marketplace to all Canadians, that is too high a price to pay for one rather small profession in the country.

Mr. McCaffrey: I could not agree that there would be any advantage to Canadians by encouraging Canadian actors in their profession.

Senator van Roggen: I did not say that. I am talking about 100 per cent. That is all I am interested in at the moment.

Mr. McCaffrey: I would have to go back to the proviso I made a minute ago to Senator Davey, that Canadian actors want to have opportunities in other parts of the world as well.

Senator van Roggen: Exactly.

Mr. McCaffrey: And we would not want some action of ours to deny them that. We would not want to be hypocritical about it.

Senator van Roggen: Surely, if we say to the United States and the rest of the world that we will not allow commercials from anywhere else to be shown in Canada we can expect to have retaliation against the $6 million worth of commercials that are produced in Canada now for sale in the United States. It is bound to go both ways, is it not?

Mr. Primeau: If that was a viable trade-off, yes.

Senator van Roggen: But if we want to legislate that it has to be 100 per cent, that if you import commercials and put them on television in Canada you will go to jail, then we cannot have it both ways. This is going to close down the border on the subject. I would rather work towards as high a percentage in Canada as possible and leave the border open to two-way trade.

Senior Laird: So would I.

Senator McElman: I think we should put to the witness a supplementary to that. It just cannot be brought down to as simple an equation as Senator van Roggen suggests. We are not just talking about something for the development of Canadian actors. I am sure the witness will agree that there is much more involved than that. There is a great deal more involved than just promoting the interests of Canadian actors.

Senator van Roggen: I was quoting the witness when I raised that point.

Senator McElman: I realize you were, but the record should show clearly that that is not all we are talking about here. There is a great deal more involved.

The Deputy Chairman: I think the witness should explain and comment on it, if he wants to.

Senator van Roggen: Yes.

Mr. McCaffrey: I believe the essential purpose of broadcasting is to provide a means of communication between peoples. The actors are merely agents of the communications process or are among the agents. They are being served in that communications process and they are serving the service as well. But the main thing is to provide the communications service which the people of Canada need and want.

Senator McElman: The actor aspect is desirable but secondary.

Mr. McCaffrey: It is.

Mr. Primeau: I think I should explain that when I used the term "actor", I meant not just the individual Canadian actor but the Canadian industry, the production houses and so on. It is not just the actor as one aspect of production. It is the whole Canadian industry.

Senator Prowse: I am a little confused by the chart, Appendix A, at the back of your brief. Under "National Television Advertisers" there is a subheading, "Total Television Expenditure". Under that there are figures in dollars and then there is another heading next to that, "Per cent Television", under which there are percentage figures. What do those percentage figures signify? If the total television expenditure is, for example, $7 million, and the percentage is 99 per cent, does that mean that 99 per cent of that $7 million goes to the television station or does it refer to the number of stations or what?

Mr. Primeau: This information is from the Television Bureau of Canada, in Toronto. Looking at the first advertiser, senator, Procter & Gamble of Canada Limited, the total television expenditure is $7,571,962, and the 99 per cent figure following that means that they spent 99 per cent of that amount on advertising on television and the other 1 per cent on other media.

Senator Prowse: That is what I wanted to get clear. I was not sure what it said.

Mr. Primeau: If you look on the second page, senator, you will see No. 1, Procter & Gamble, has total print, radio and TV of $7,600,000 and the total for television is 99 per cent. That second page is much more explanatory than the first page.

Senator Prowse: I see.

Senator Sparrow: From your brief, are you in favour of advertising on our national broadcasting system?

Mr. McCaffrey: This is not part of our brief. If we made a separate brief on that we would have to discuss it. From the discussions we have had, we have been in favour of limiting or monitoring and, perhaps, restricting television on children's programs. Within the next year we will likely come up with a policy on advertising of any kind on the public network.

Senator Sparrow: You will have a policy on that at that time?

Mr. McCaffrey: We cannot give you it at this time.

Senator Sparrow: My second question is: What would your policy be on provincial broadcasting, government broadcasting, as related to direct broadcasting and cablevision?

Mr. McCaffrey: This is another policy which we want to develop in the next year. We recognize some of the claims made by the provincial government for the right to access to cable because many in our group are arguing that this is not broadcasting, it is just internal transmission of messages; it is not using the air to broadcast, so it is not really broadcasting. We already recognize the educational jurisdiction of the provinces, but we see the conflict between the educational jurisdiction and the broadcast jurisdiction, and we, in our group, have not yet been able to resolve how to draw the line between the two of them.

Senator Sparrow: Thank you—next year for both policies.

The Deputy Chairman: Would you like to say something, Mr. Primeau?

Mr. Primeau: Just one thing. I might point out the reason why it may seem to you we have not got these things done. I pointed out at the beginning that we were just developing and doing it nationally. We have the input from across Canada from those who are members of our league, and when we do give it to you it will reflect their opinions and not just something written up by us.

The Deputy Chairman: Mr. McCaffrey, Mr. Primeau, and Miss MacDonald, thank you very much.

Our next witness is Mr. Sidney Handleman, who is one of our colleagues, a member of the Legislative Assembly of Ontario for the county of Carleton.

Mr. Sidney Handleman, M.P.P., Member of the Ontario Select Committee on Economic and Cultural Nationalism: Thank you, senator.

The Deputy Chairman: On behalf of my colleagues and the members of this committee, Mr. Handleman, I would like to welcome you here and thank you very much also for having accepted our invitation, because we understood your chairman, Mr. Rowe, could not come. I would like to take this opportunity also to thank your chairman and your clerk for having sent us briefs and a transcript of the hearings of your committee, both of which are going to be very helpful for the work of our committee.

Mr. Handleman: Thank you, Mr. Chairman.

Honourable senators, first of all I want to thank you for inviting me because it gives me the opportunity to reciprocate. Our committee met Senator Lamontagne last year and one of the members of your committee, Senator Davey, on this very subject, somewhat removed. We found their input very, very valuable. We are considering your suggestions now. We have only filed a preliminary report to the Legislature, and we came into the advertising industry almost by accident.

Our main terms of reference were to study foreign ownership and economic and cultural nationalism. We got into the cultural side of it. We found there was an industry, while small in terms of total production, that had a great impact on the cultural attitudes of our province and of the nation. We held a series of hearings, somewhat the same as you are doing. We came to no conclusions. We heard conflicting evidence, just as you are hearing. We felt we needed an outside look at this one which was not biased in any way, and we asked Kates, Peat, Marwick and Company to conduct a study of the advertising industry along with several other industries. We put some urgency on the advertising industry and, as a result, we have had their report to us, and I understand there is one in the mail to you, Mr. Chairman. I am going to give you one now for your own use. This is not my brief, gentlemen; do not worry about it. I do not have a brief. It is a tremendous amount of reading. The *Globe and Mail* yesterday had a very good summary of the content, done objectively, and they said the study was inconclusive. Of course, it was meant to be. I think the conclusions will have to be drawn by the elected representatives. We will draw our conclusions, hopefully, some time within the next two or three weeks.

I have no axe to grind in this particular matter. I do have personal views which have been derived as a result of hearings before us. I have a very fringe interest in the television industry. I am a member of the board of directors of the crown corporation which operates Channel 19, the educational television station in Toronto. Of course, we carry no commercials and therefore the advertising inquiry, as such, is really not involved in that. We found that the importation of advertising matter, which I understand is your prime area of concern rather than the foreign ownership aspect, was really not related to the foreign aspect of it. This is an advertiser function. Foreign ownership of the advertiser, as distinct from the agency, might very well have the impact on importation of advertising matter.

We also found that the attempts to quantify it were very difficult and, as a result, we asked K.P.M. to devote some considerable amount of their time to this matter—the quantification of imported advertising material. They have done a very good job. I think you will find their facts are interesting.

They found, in terms of numbers of commercials, only in terms of numbers of commercials, that we, in Canada, are now producing approximately 70 per cent. However, 30 per cent which is imported carries a great deal more media value. It is used in prime time, used by national advertisers and, as a result, you could say, in terms of dollars, that we are importing considerably more than 30 per cent.

My personal view on complete bans is simply a philosophical one. I am opposed to this type of thing, opposed

to even attempting to quantify a goal. I believe, as all of us do, that we should have more Canadian content, not only advertising, but almost everything we do in this country. However, I feel that some of the suggestions that have been made by agencies to you and us, are to some extent self-defeating—the idea of complete prohibition. We made a great to-do about the Merrill Lynch commercial. I am sure you have heard about it. It was only by some of my outside reading in *Sports Illustrated* that I found it was produced in Mexico. It is Mexican culture because it was produced there? If they had used Canadian bulls would it have been any more Canadian?

Our view simply is that you cannot stop the flow of ideas. We do feel that Canadian production will have a tendency to provide a greater quantity of Canadian culture, whatever that may be, but we simply do not feel that you can legislate the imposition of a national culture by banning the importation of ideas. The importation of goods is another matter, and I think it is a proper matter for the Government of Canada to look at. I am in full agreement with tariffs. The ridiculous value placed on the importation of television components is not an incentive to produce in Canada. If I can get a good commercial that has proved itself well in the United States at a ridiculous amount, something like $65, I believe it is, for a one-minute commercial, there is really no incentive for me to have it produced in Canada. I do feel that there could be a realistic valuation for duty on it, based on production costs amortized over the number of copies, but with a minimum value of not less than ten per cent of the production cost, if it is going to be used in Canada commercially, and I would say at least ten per cent of the production costs, based on our population, should be the duty.

On the other hand, if there are only two copies, we find that many Canadian advertisers are having their commercials produced in the United States, using it once in the United States simply to qualify for that ridiculous per-foot value—they show it once on Watertown or some obscure little station to say it has been used in the United States, and it may have cost them $10,000, $20,000, $30,000 or $40,000 to do this—but they get a valuation of that at so much per foot, and in my view that should certainly at least be amortized over the number of copies, and in the case where there is one in the United States and one here, at least half of it should be dutiable, if not all.

Senator McElman: You have evidence that that is done?

Mr. Handleman: Yes. It is mosty hearsay, but it seems to me that if I were an advertiser having a production done for a Canadian advertiser in the United States, I am certainly not going to pay duty on $40,000, if I can avoid it by this simple little trick of having it played once or twice somewhere in the United States. It would simply be common sense on the part of the advertiser. I am not blaming him for it. He is simply using the rules to his best advantage.

So, I am opposed to bans, and I do think there are incentives. The type of tax disincentive that you have on advertising in foreign publications can also be somewhat self-defeating. We have found situations, for example, where there are specialty magazines in the United States —and I am sure that Senator Davey is aware of this situation—where the Canadian consumer will not read anything but that specialty magazine. The inability of a Canadian to advertise in it and get full income tax exemption can really harm him in the market when he is competing against Americans who do advertise in the magazine. One example is *American Bride,* where all the bridal gowns are advertised. The bride will look through that American magazine, because that is the one she wants. Now, if a Canadian manufacturer wants to advertise his bridal gowns in it, he can do so without any problem, but as soon as he puts his Canadian address on it, he loses his tax.

So, in my view, these are examples of what restrictions can do, and I am certainly not opposed to them within reason, but I do think that we could provide other incentives to require more Canadian production of television advertising.

I think we find in our study that the radio part of it is really not significant; almost all radio advertising in Canada is produced in Canada, and I think this is to the credit of the CRTC which has developed, through its Canadian-content regulations, a viable, energetic, flourishing recording and production industry so far as radio is concerned. I am sure the same thing is happening with their Canadian-content regulations on television. This has helped to establish us, and it is perhaps the reason why we have such a high percentage of Canadian produced television commercials.

There was one other factor that came out, and it was of great interest to us to find that in England the advertising agency business is almost entirely foreign dominated, mostly by the United States. And yet from England is coming some of the most innovative, unique and original advertising content in the world. So we feel that perhaps the foreign ownership aspect is not a determining factor in the amount of production of commercials.

I think I have stated my personal views, and I have to make it clear that these are not the committee's views. Our questioning has led us to some knowledge of each other's position on this, and I am sure that when I state my position in the committee as I have stated it here, there will be objection, and those of us who listen to debates rather than endure them sometimes change our minds. At least, I have stated the position I have stated now before I am subjected to the opposing views of my colleagues on the committee. I am simply philosophically opposed to a 100 per cent ban because there are many examples where it would be completely unworkable. I have heard senators questioning the witnesses here.

I do not know how the Irish Tourist Board, for example, if it wishes to advertise its culture as an incentive for tourism in Ireland, could possibly produce a program in Canada. I suppose in a way they could. They could bring over all the actors, some of the emerald sod and some of the other things that they would like to show on their commercials. And I suppose that the people in London who want to show buses could take a Picadilly bus and put it in front of the Chateau Laurier, and use that. But they wish to export their culture to Canada in the form of a commercial. There is no way you can stop that, and if you were to try to do so you would be leaving yourself wide open to great criticism.

Senator Prowse: Like the Air Canada commercials for holidays in the Bahamas.

Mr. Handleman: Yes. I doubt very much if we could duplicate that. Another thing we found, of course, was that a very large proportion of imported commercials were travel commercials. So we are not doing badly in the production of commercials in Canada.

Senator Prowse: Can you give us any percentages?

Mr. Handleman: Yes, we have exhibits here, and in terms of numbers about 70 per cent of the total were produced in Canada. A remarkable feature to us was not that fact, but the fact that the ones that are imported, as one of the witnesses said here, are probably better produced and are imported by national advertisers as distinct from local advertisers. They are imported by subsidiaries of foreign-owned companies and, as a result, they spend a great deal more money on media time for those imported commercials than the 30 per cent would warrant. KPM were able to calculate that—and I do not have the figure here so I shall have to find it—a per-minute value on imported commercials as compared with Canadian, this value being the amount of money spent with the networks.

Senator Laird: Is that in the KPM report?

Mr. Handleman: Yes, it will be in the KPM report, and it is considerably higher than the Canadian value per minute.

That is my presentation, Mr. Chairman.

The Deputy Chairman: Thank you very much. We are now open for questions.

Senator Laird: Mr. Handleman, since you have some connection with this industry, is it possible that you might know about the amount of production in Canada of commercials which are exported to the United States?

Mr. Handleman: No. We do have some information on this, but my connection with the industry is not on the commercial side. Our view was that this would increase as our agencies became more international. If a Canadian agency moves south of the border to service either American or Canadian accounts, then that agency would tend to bring with it what it knows best—the Canadian producer, the Canadian actor and the Canadian writer. But obviously this has limitations too. Since I have gone on this committee I have been watching commercials and I find them very interesting. They are not at all boring. The Buffalo stations and the Toronto stations are a prime example, I think, of the differences we have. One of our committee members was quite upset over the finance company that used Red Kelly. In the United States they used Joe Garagiola, a well-known baseball player. I find the American production far more interesting. The American Express people are now running a series of ads which I have seen on both Buffalo and Toronto stations. They are different. They show the theft of a woman's purse. Perhaps you have seen them. But what follows that in the United States is a well-known television personality who explains to you why you should buy American Express travellers cheques. In Canada it is a voice over a slide. The other part has been delted. So there are differences, and I think the advertisers are well aware of their market and they are going to make this differentiation. That is their job and that is why they are using advertising. They are going to gear their advertising to Canadian tastes and to Canadian pocketbooks, or to Canadian culture—if you want to call it that. So I think the natural tendency will be to use more and more Canadian production. Some of it may be adaptation of American, where it is best done.

Senator Laird: I do not suppose KPM touched that.

Mr. Handleman: Well, they talk about the internationalization of advertising, and as agencies become more international, the tendency will be to use more Canadian advertising in other markets. But obviously the natural market is the United States market mostly because of accents and terminology.

Senator van Roggen: Mr. Handleman, to what extent has your committee so far applied itself to the question that we have heard so much about here, that is of commercials affecting Canadian culture because they are imported? I have found some difficulty in following this reasoning, and I don't know that watching an advertisement is going to turn me into a mini-American.

Mr. Handleman: In my opinion, the effect of advertising is very subtle and neither direct nor immediate, but long-term. Exposure to the "Mmm mmm, Good" by Campbell soups for many years may make it part of our vocabulary. I do not know whether that would be part of a foreign culture.

Senator van Roggen: But is Campbell soup a foreign culture? It is manufactured here.

Mr. Handleman: No, the soups are manufactured here. Whether the terminology of the commercial has been an intrusion on or an addition to our culture, certainly we have adopted it and it is now part of our culture. Whether it is a good or a bad addition, I do not wish to make a judgment decision. Certainly the term itself is not an indigenous Canadian invention. We use it now and I questioned representatives of the agency which handles the Campbell soup business and they told me that they no longer use it. Yet every Campbell soup commercial I see uses that little phrase. That is only a very minute part of the commercial, but it becomes part of our vocabulary. I am not prepared to say whether that is good or bad.

Senator Davey: Surely, the answer to Senator van Roggen is that the American culture has become a world culture?

Mr. Handleman: There is more to that in other countries than here. We sort of accept it. I believe most of us who are moderate nationalists tend to resent, without knowing what we can do about it, the intrusion on our culture. When I find myself using American phraseology I try to catch myself up. It may be just a natural resentment on the part of a person who feels he is Canadian and distinct. This question of Canadian culture is a large part of our study. We considered advertising in the first instance because we felt it does have cultural implications. I have found great difficulty, as you have, in coming to grips with whether it is something which we should in fact try to stop.

Senator van Roggen: I have much more difficulty feeling that the advertisement is effective from the cultural point of view, as opposed to the program. Maybe the advertisements do not register with me very much because, as is the case with many others, I try to turn them off. I cannot tell you from watching the Jacques Cousteau series of underwear activities who advertises on it.

Mr. Handleman: I think it is 3M.

Senator Davey: Do you know who sponsors the broadcasting of the Watergate hearings?

Senator van Roggen: I watch a great deal of channel 9 from Seattle, which is public broadcasting. Bob Hope broadcasts the July 4 show which, of course, contains cultural content.

Mr. Handleman: That is, frankly and openly, cultural.

Senator van Roggen: But the ad that goes with it is far more subtle.

Mr. Handleman: I think we all like to say we are not affected by advertising, but have that strong will and resistance. We sincerely believe this. We were discussing beer commercials and I tried to think of the sponsor of the one frequently shown on Buffalo television which uses Ontario Place as a setting. I cannot for the life of me think of the brand of the beer. It is a very interesting commercial, showing Ontario Place throughout, which I think is great to be shown in Buffalo. So it is not really intrusion of the brand that bothers me.

Senator Davey: It is Labatt's.

Mr. Handleman: Imperial Oil, a foreign subsidiary of some magnitude and a very large advertiser, explained to us that the only foreign commercial, or even idea, that they had accepted from Standard Oil was the "tiger in the tank" series, which they found to have worldwide effect.

Senator Laird: It was originated in England.

Senator Davey: Let us be clear on this; it was produced in England by Americans.

Mr. Handleman: I am not too concerned about that type of thing, but if we are to have any type of cultural protection—and I say "if," it is a big "if"—maybe we do not want it and maybe we do not need it, but if we are to have it we look on the advertising commercials as being more subtle than the program itself, which is quite openly and frankly an American setting. However, as one member of the committee pointed out, it is very difficult to tell the difference between an American-produced commercial and a Canadian-produced commercial. Our culture is a multi-culture institution and we have drawn on the cultures of all countries. The prime concern of Canadian nationalists is the potential domination of our culture by the American culture. The Coca-Cola imperialism is no longer a bad thing. It has spread and been accepted all over the world.

Senator van Roggen: Even in Russia.

Mr. Handleman: That is right, the Coca-Cola culturalism was very dangerous. Culture is not just ballet and opera, but anything which adds to the language and national mores in any way, shape or form. Perhaps, therefore, we should not be too concerned with attempting to build a wall around ourselves and develop this distinctive Canadian culture. We believe we have one. It is very difficult to define, but we know we are Canadians and I sometimes question the need to constantly carry on this navel-gazing exercise, asking what is a Canadian. We know we are Canadians and in my opinion that is all that matters.

Senator Laird: Might I point out to you that a number of us were given flag pins for distribution. I had many requests from all types of people, including Americans, for one of these pins when they were travelling abroad. So there is something distinctive in all of us that makes us wish to show that we are Canadians.

Mr. Handleman: That is right, and we know it.

Senator Prowse: They also know it; they can tell by the accent.

Mr. Handleman: Yes, we do not have very much impact on them and maybe it hurts our pride.

Senator Davey: As a supplementary to Senator van Roggen's inquiry regarding culture, is it not true that an additional reason for taking steps to encourage Canadian production of television and radio commercials is to encourage the employment of Canadian performers and artists? Is it not also true that those Canadian performers and artists quite aside from their function in the production of advertising commercials, have a substantial input to make to the Canadian culture?

Mr. Handleman: Yes, that is the economic side of it and it has its cultural overtones. I am somewhat persuaded, though, by the argument that Canadian advertisers should set up a global budget for advertising. So much would go into production and so much into media time. The amount of money to be put into production must come from somewhere in that budget. I am not entirely persuaded they would not increase their advertising if they had to produce in Canada. However, if actors, writers and technicians are employed in the production of television commercials and there is less money to be spent on media time, it would seem to me this would, of course, create a reduction of employment for those working in the medium itself.

Senator Davey: In my opinion, that would depend specifically on the product.

Mr. Handleman: Oh, yes, it would vary from product to product. I am somewhat persuaded, however, by the argument that there would be a balance. In my view a pretty moderate incentive, such a higher duty, would make a man take a look at it and decide that for that amount of money he could do a little better. That is the type of step that I see being taken and I will recommend to our committee that it recommend this to the Government of Canada.

The Deputy Chairman: Would it increase the price of the product?

Mr. Handleman: It is said that the public does not pay for advertising, but advertising pays the advertiser. I

am sure, however, that we all know we do pay something for it.

Senator Davey: Is the committee to meet in camera with Mr. Handleman, Mr. Chairman?

The Deputy Chairman: Yse.

Mr. Handleman: I really do not think that is necessary.

The Deputy Chairman: It is up to Mr. Handleman, because he mentioned that when he spoke to Mrs. Pritchard. If he does not object, we could sit in camera.

Mr. Handleman: I have no objection to sitting in public. I discussed this with the chairman of our committee yesterday.

Senator Davey: He would not be able to tell us any secrets.

Mr. Handleman: We have no great secrets. Our hearings were in public and are available in transcript form. The only point which concerned me was that of releasing my own views. I spoke to the Chairman of our committee, who pointed out to me that several members of the committee had already stated their views and it will be a matter of arriving at a consensus. I therefore have no objection to stating my own views in public.

Senator Davey: That is fine.

The Deputy Chairman: That is why I tried to have us stop at 10 minutes to 11, because I wanted to allow Mr. Handleman some time to be a witness *in camera*.

Senator Davey: When will your report be tabled in the legislature?

Mr. Handleman: We expect our reports to be stayed, because we have many more things to discuss at the moment. We are on the verge of approving a draft report on foreign faculty in Ontario universities. We are also close to the end of a report on foreign land ownership, which I think will be of interest. Most of the other provinces have one. Also the report on the advertising industry, since this is a study which is now before us. It will probably be dealt with following that. We would expect to have two or three reports ready for the fall session of the legislature. We have a resolution before the legislature which permits us to release reports when the legislature is not sitting. We may very well be able to do that before the October session.

Senator Davey: Will the other two reports be first?

Mr. Handleman: I would think so. We are meeting next week in camera to prepare our report on the university faculty. Following that we will be dealing with foreign ownership, which is just about ready to go to print.

Senator Davey: The third report will deal with agency ownership and commercial production. Those are the only two items that you will be dealing with?

Mr. Handleman: Yes. It will be ownership and what we call corporate behaviour and public attitudes. Our view, of course, is that behaviour and attitudes rather than legislation will govern the future on this particular matter. Foreign ownership is something that is being dealt with by the federal government on a very broad scale through the foreign investment review. We would like to have some comments to make on the extent of ownership. My personal view is that encouragement of internationalization is far better than restriction of foreign ownership. But that is a personal position.

Senator Davey: May I ask you one question on agency ownership? I think it is closely related. I wonder if this is a fair description of the position taken by the report which the Deputy Chairman has, and which you were kind enough to bring. This appeared in the Toronto *Star* last night. Did you see that article?

Mr. Handleman: Yes. They did not do as well as the *Globe and Mail.*

Senator Davey: It says:

> Canadian ownership requirements for the advertising industry could stem the import of American culture without significantly disrupting the economy, according to a special report on foreign ownership released yesterday.

Is that a fair statement?

Mr. Handleman: It is a fair statement, but it is incomplete.

Senator Davey: Could you complete it for us?

Mr. Handleman: We asked KPM to develop policy alternatives for the committee on the basis of their fact-finding mission. It is their view in the study—they pointed this out—that the tendency to produce in Canada would be strengthened by a high degree of Canadian ownership. The simple fact that you have Canadian principals who are involved in the ownership of the agency will lead them to use Canadian production more, and Canadian production, as I have already said, does have, in my view, cultural overtones. It is fair enough to say that would be the case. If we were to recommend legislation which would increase Canadian ownership of advertising agencies, it would have an effect. Not a measurable effect. I do not think you would be able to qualify it. It would be very subtle, and it would be a matter of personalities more than anything.

Some American-owned agencies who have Canadian management—they all have Canadian management—use Canadian production as much as Canadian-owned agencies. It is a very subtle thing. The attitude would be different. The behaviour of the agency might be moderately different if it were Canadian-owned.

Senator Davey: There is a second point which does not relate to production. It relates to the simple fact of ownership.

Mr. Handleman: We came into the question of production from the ownership angle. Our terms of reference included ownership. We find that ownership might have a cultural impact.

Senator Davey: I appreciate that you cannot tell us what the committee will finally recommend. In the *Globe and Mail* article yesterday there was a suggestion, and I wonder how practical it is. It said:

> Just as offensive TV commercials are rejected by the federal agencies, so imported material could be judged against established "Canadian" criteria.

Is that a sensible suggestion?

Mr. Handleman: I do not think there was an intention here to regulate taste. That is not the intention of the report. I hope I speak for the committee now when I say that I do not think it is our intention. We say that we do have federal regulatory agencies which have a certain impact on the content of commercials.

As I understand it, you cannot advertise certain pharmaceutical products or certain comestics in a certain way. As a result, where the Americans do not have the same type of restrictions as we do, it would pay the Canadian advertiser to have it produced in Canada. I think that is all that we mean there.

CRTC does regulate taste to some extent when they discourage the use of things like bad breath on commercials.

Senator Davey: It says "judged against an established Canadian criteria."

Mr. Handleman: I would have to read the report and refresh my memory. I think the established Canadian criteria they are talking about are the various regulatory restrictions by a number of agencies, such as Health and Welfare and CRTC.

Senator Davey: How sensible do you think is the suggestion for an integrated market? It is something similar to the Auto Pact. One of the American agencies made that suggestion here earlier this week.

Mr. Handleman: We have a one-way integrated market now. There are no real restrictions on importation, other than these regulatory restrictions. There are certainly no economic restrictions. The customs duty is so nominal that it is laughable.

I can only speak personally. In my view, this is the kind of arrangement which might be to our benefit. Even if we had to do it unilaterally, as we did in the Auto Pact, before the Auto Pact came into effect and the Americans said it was against their law, I am sure we could set up an incentive program to export Canadian-produced commercials by providing offsetting incentives. I am not talking about grants, handouts or ripoffs. I think certain types of incentives, such as an exemption from Customs duty on imported commercials, would help. If the customs duty is made meaningful, a man who exports $1 million worth of productions might be allowed duty-free importation of $1 million to offset it.

Senator Davey: The trouble with that is that anyone who exports $1 million worth of commercials is a fairly major kind of entrepreneur. I am wondering whether we should not be looking instead at ways and means of assisting artists and performers. The obvious answer is that it would in the long run, and I suppose it would. But I am wondering whether we should not be considering ways and means of a more direct form of assistance to performers.

Mr. Handleman: You are not talking about advertising agencies or advertisers?

Senator Davey: No.

Mr. Handleman: This would be in addition to the Canada Council or the operation of the Ontario Council for the Arts. Yes. This is another matter for consideration when we get into the pure cultural aspects of our report. The Ontario Council for the Arts, for example, this year has had its budget increased two and a half times. I think that will be a tendency that will continue.

Senator Davey: This would be to facilitate people in other areas.

Mr. Handleman: It is also to enable them to spread out of Toronto a little more and get into Northern and Eastern Ontario.

Senator Davey: Will your report deal with—the chairman may report me out of order on this question—the print media in any way, particularly magazines?

Mr. Handleman: No; but mostly because we are talking here about ownership. The importation of foreign publications has always been dealt with by a royal commission on publications.

Senator Davey: But it dealt really with books and not magazines.

Mr. Handleman: That is right. It did not deal with magazines. It was talking about books. We have not devoted ourselves to that aspect of it. One of the terms of reference that we have is to review our royal commission report on book publishing. We did review it. We find it excellent. Some of the measures have already been taken.

Senator Davey: There was one very significant recommendation relating to the magazine industry, as you know, regarding the magazine tax. Did you reject that?

Mr. Handleman: Yes, that was rejected.

Senator Davey: I think the premier has rejected that as well publicly.

Mr. Handleman: Yes. By not enacting that particular recommendation, I think you can take it that there was almost unanimous rejection of it.

Senator Davey: I think there should have been. I am still, as you know, perplexed by the problem of *Time* and *Reader's Digest,* and I am wondering if the committee addressed itself to that.

Mr. Handleman: Well, we heard you.

Senator Davey: Everybody has heard me on that subject.

Mr. Handleman: We have also read Senator O'Leary's first report on it. I do not think we want to get our fingers burned in what we feel is a strictly federal jurisdiction. The question of principle involved is one, I am sure, which some members of the committee would agree with you on and others not.

Senator Davey: I do not know whether you heard the witnesses from the Canadian Broadcasting League, but they made a reference in their brief to the CRTC suggestion in a policy statement issued in July, 1971 that the government extend the provisions of what was then

section 12A of the Income Tax Act to apply to broadcasting as well as to print media. That was a recommendation which the Senate Committee on Mass Media made even prior to the CRTC. Did you get into that at all, the question of border television stations?

Mr. Handleman: Yes. The analogy to the *Time, Reader's Digest,* foreign publication regulation was brought to us. The study of KPM deals with the spill-over.

Senator Davey: Spill-over, which way?

Mr. Handleman: Spill-over from the U.S. border stations into Canada. That is different, of course, from what you are talking about here, which is advertising by Canadians on foreign stations for the Canadian consumers. It is my view that if the CRTC proceeds, and I understand they are, with the permission to cable companies to cut out foreign commercials, that would probably stop a great deal of it. I think one of the reasons Canadian advertisers advertise on border stations is, first of all, because of lower rates, but primarily because of the fact that advertising time on Canadian channels is limited. They cannot get the amount of advertising time that they want. I am sure Labatt's would rather use that Ontario Place commercial on a Canadian channel many, many times rather than using the Buffalo station.

Senator Davey: I just do not accept that statement.

Mr. Handleman: That advertisement is directed to the Toronto market primarily.

Senator Davey: But the Buffalo stations have a huge audience in the Toronto market.

Mr. Handleman: Yes, that is true, too.

Senator Davey: I am sure that on a cost per thousand basis it makes more sense for Labatt's to purchase Buffalo station time.

Mr. Handleman: Again, I do not know that we would want to involve ourselves in a federal income tax matter. Certainly the analogy between that and advertising in foreign publications is direct.

Senator Davey: Toronto, of course, is by no means the worst example. I know of a station which is set up across the border from Winnipeg exclusively as a parasite to prey on the Winnipeg market.

Mr. Handleman: And, as you know, we have the radio station in Windsor, which is the classic example of what can be done the other way. I am not terribly impressed by these threats of retaliation. I have heard them all of my life in various aspects of economics and they do not generally come to pass. Certainly, a total ban or a total prohibition of this kind might lead to some measures of retaliation. Because I am an internationalist and I believe in Canadians going outward, I would not want to see anything that might tend to stop that.

Senator Davey: I have other questions, Mr. Chairman, but perhaps other honourable senators wish to ask questions at this point.

Senator van Roggen: Mr. Chairman, I do not know whether I should direct this question to Senator Davey or to the witness.

With respect to this business of imposing a tax or prohibiting Canadians from deducting as a business expense the cost of advertisements such as the Labatt's advertisement on the Buffalo station, which is a Canadian ad directed at a Canadian audience, would you not be inviting, if they were not permitted to do that, an American ad directed at an American audience or directed at the international market taking its place and Canadians still watching it. In that instance you would be suffering from a cultural point of view in that Canadians would be required to watch an American ad.

Senator Davey: That is like arguing that if there was no Canadian edition of *Time* we would be deprived. That is a deprivation I can live with quite nicely.

Mr. Handleman: I do believe, senator, that if you did that and the Americans were to take the position that we could not ship ads over to Buffalo for airing on those stations, we would simply be encouraging Labatt's and others to have their advertising produced in the United States for the Canadian market and for the American market as well. As businessmen, I think they would be right to use the regulations to their own advantage. If they were stopped from advertising on the Buffalo stations for a Canadian audience, they they would advertise on the Buffalo stations for an international audience. How could you stop it?

Senator Davey: Perhaps I might comment on that. What about those Canadian advertisers who do not do business in the United States and who advertise in the American market? The perfect example of that are those great economic nationalists who control the Toronto *Star,* which advertises on the Buffalo television station.

Senator van Roggen: My point is that if Canadians are going to watch that Buffalo station or border stations which come into the Vancouver market, or wherever, they might as well be looking at the Canadian ads rather than American ads.

Senator Davey: Then you attach greater importance to the advertising than you did a few minutes ago.

Senator van Roggen: That is why I am putting the question to you. These ads are supposed to be a great deprivation of our culture, and I am just wondering why you would want to abandon them. What I would like to see is the American market open to Canadian advertising. I think that would stop it.

Senator Prowse: One of the suggestions made by Mr. Hunter, President of McConnell Advertising Agency, was that rather than looking to a ban or a penalty, we could perhaps achieve it by allowing people who use Canadian-made advertising the incentive of a 150 per cent write-off, instead of the 100 per cent write-off, as they do at the present time. We had something similar to this previously. I am not sure whether it is still in effect. We did have a 120 per cent write-off for research and development.

Mr. Handleman: Yes.

Senator Prowse: I do not know how effective it was, but that would be one way of providing encouragement in making sure it got to the place you wanted without necessarily getting ourselves into trouble somewhere else.

Mr. Handleman: A subsidy is a sudsidy, no matter what you call it. I am a Conservative—I want you to know that!—and I am not philosophically opposed to incentives to business. However, it does seem to me that it is the Canadian taxpayer who will pay. If he is willing to pay the price for this, then I would not object to it. I would rather see a realistic duty on imports. That would provide the other form of incentive without the Canadian taxpayer directly subsidizing Canadian production. It is a business, after all, and it should be viable and self-supporting. I am not a free trader. I certainly think Canadian business requires a certain amount of protection against the kind of intrusion that can take place, but it should be realistic. The way it sits right now, it is absolutely ridiculous. There is no disincentive whatsoever to importation. It is simply a matter of behaviour and attitude.

Senator McElman: Obviously, the 50 per cent additional write-off within the context of the present system on this particular product, would not offset, would it, in dollars? There just would not be the offset.

Mr. Handleman: That is right. It would be a straight gift, really.

Senator McElman: Exactly. It would still be to the interest of the importer to continually bring that in, and all the Canadian taxpayer would be doing, instead of providing an incentive, would be providing profits for those who are already making profits.

Mr. Handleman: Well, these things do have a snowballing effect. If you are employing Canadians, presumably they are making money and paying income tax, which they would not otherwise be paying. There are all kinds of ramifications to it. If you look at it in a straight black and white sense, to me, is is a straight gift to the advertiser.

Senator McElman: A subsidy, under any other name, is still a subsidy.

Mr. Handleman: That is right. It does not matter what you call it.

Senator Davey: Did any media appear before your committee? I know the agencies did.

Mr. Handleman: We met with your friends of Time Life Incorporated in New York.

Senator Davey: You met them in New York?

Mr. Handleman: We met them in New York, yes. We had Mr. Davidson, the chairman of the board, pour drinks for the committee.

Senator Davey: Why would it be necessary to go to New York?

Mr. Handleman: We did not go to New York specifically to meet with them. We went to New York to meet with the National Foreign Trade Council, and others who are interested. We met with Anaconda and a number of others who have had experiences in other countries with nationalist legislation, particularly in Chile. We felt that while we were there we would like to meet with Time Life and discuss with them the tax situation.

Senator Davey: Was that Time Inc. or Time Canada?

Mr. Handleman: They had their people from Time Canada there; they brought them down from Montreal; but we actually met with Time Inc. We got quite a bit of insight into their four pages of Canadian news. We met with CBS and with NBC. We came out feeling a little bit patronized. We had been patted on the head and told what nice fellows we were, "We love you Canadians." When Canadians appear they suddenly think about Canada, but most of the time we are like the fly under the elephant's foot; they are really not aware of us and the impact they have on us, particularly the broadcasters. We asked them whether they were aware of the amount of spillover into Canada of their newscasts, of their programming, and they said that as far as they were concerned they just did not take it into account.

Senator Davey: These were American broadcasters?

Mr. Handleman: Yes, CBS and NBC. We did not meet with ABC.

Senator van Roggen: That is interesting. There is not a conscious understanding that they have an additional ten per cent of their market here?

Mr. Handleman: No, they simply do not program with that in mind. At least, this is what we were told.

Senator Davey: Do they sell their advertising with that in mind?

Senator van Roggen: I would think so.

Senator Davey: You had better believe it.

Mr. Handleman: They do not sell advertising directly. They did explain to us that it is, of course, the affiliate stations that do the sales, and the stations themselves sell the advertising.

Senator Prowse: It sounds like a Watergate cover-up.

Senator Davey: The point I am making is that, when advertising is sold to the national advertisers in the United States by the station representatives you can be quite certain that the ten per cent spillover market is a major factor.

Senator van Roggen: It must be.

Senator Davey: I am sorry for asking the same question a second time. Perhaps I did not ask it specifically, but I did not quite understand your answer. Will you specifically make a recommendation—this is an easy question for you to answer, I know, when you cannot say—about 12A as it relates to border television and radio stations?

Mr. Handleman: I cannot really anticipate.

Senator Davey: Or will you say it is a federal matter and you will not deal with it?

Mr. Handleman: We are quite prepared to recommend to the Ontario Government that they recommend certain measures to the federal government. Whether that will be one of them, I really cannot say. That will be up to the committee. I am sure we will discuss it.

Senator Davey: You saw the Time and Life people in New York; you saw CBS and NBC in New York. Did you speak to any Canadian media people? For example, did the *Toronto Star*, Southam, the Thomson papers, or Baton Broadcasting appear before you?

Mr. Handleman: No. We did meet wtih the Committee for an Independent Canada. Walter Gordon was the chairman of that meeting. We did not deal specifically with media at that time.

Senator Davey: The area in which I was heading was towards any response that the Canadian broadcasting media, individual stations and so on, might have had towards any position you might take on production?

Mr. Handleman: No. In our study we have a list of the people who appeared before us. I really do not recall anybody directly from the broadcasting field.

Senator Davey: I would be curious to know if, for example, Mr. Bassett appeared before you.

Mr. Handleman: No, he did not appear before us.

Senator Davey: Did they make any written submissions?

Mr. Handleman: No.

Senator Laird: What about the CAB?

Mr. Handleman: They did not appear before us either, nor did they submit anything, as far as I can recall. Of course, we have had a mass of information, as you know.

Senator Davey: You did not make any special consideration of CKLW in Windsor?

Mr. Handleman: We went to Windsor and we were exposed to it. We were exposed also to the television service, if you can call it that.

Senator Davey: Were you exposed to Senator Laird when you were there?

Mr. Handleman: Speaking merely as a viewer, I was shocked at what the people in Windsor are subjected to in the form of broadcasting. They are really deprived of a Canadian flavour to their broadcasting.

Senator Davey: Is that television or radio?

Mr. Handleman: Television and radio. Even the Canadian station. Now it meets the CRTC requirements, I agree. I do not listen to that much AM anyway. It may be that is simply reflecting the AM scene in Canada, but it certainly did not sound Canadian to me, other than the odd Anne Murray.

Senator Davey: They must meet the requirements.

Mr. Handleman: They meet the Canadian content requirements, sure. The Canadian content requirements are geared almost entirely, though, to the economic scene. In other words, you have to have so many people involved, as I understand it. Your composer does not have to be an American; that is the content, as long as you conform so far as the performers or technicians are concerned.

Senator Davey: It is a very easy regulation.

Mr. Handleman: We have no problem with it on Channel 19. We are the only producer of educational television in Canada, so we just measure it by our own programs.

Senator Davey: When you were watching CKLW television, you felt you were watching an American station, did you?

Mr. Handleman: Our own committee they had to explain to the audience the reason why they were not permitted to film the proceedings of the committee. They said, "You will find this strange, but in Canada you are not permitted to televise the proceedings of a legislature or a legislative committee." I do not think that would be necessary in Toronto or in Ottawa, but it seemed to be necessary in Windsor. Again we are talking about a subtle thing, but it did not seem a Canadian station to me when you have to explain to your audience why they could not come in.

Senator Davey: You did not speak to the station?

Mr. Handleman: The chairman was interviewed outside the committee, but we did not speak to the station.

Senator Davey: I meant the station appearing.

Mr. Handleman: No. That was just as a news item.

Senator Davey: That station will become part of the CBC shortly, will it not?

Mr. Handleman: It is associated with them now.

Senator Davey: I think it is 75 per cent owned by Baton and 25 per cent by the CBC until 1975.

Senator Laird: By 1975 it is to become fully owned by the CBC.

Senator Davey: I wonder if the CBC will make the station more Canadian.

Mr. Handleman: I suppose on their local news they still have to pay some attention to it. They are still looking for viewers in Detroit. They do not want to depend entirely on the Windsor market.

Senator Laird: They depend mostly on viewers in Detroit.

Mr. Handleman: Sure.

Senator Laird: I cannot very well be a witness, but do you know that they observe the Canadian content rule, and that any number of Americans in Detroit look at a lot of Canadian programs, such as "Hockey Night in Canada" and stuff like that?

Mr. Handleman: I am sure they do.

Senator Laird: Also, do you know that a lot of CBC programs that people squawk about not seeing are carried, but instead of looking at CKLW they are looking at the Detroit station and complaining about not getting Canadian broadcasting? Are you aware of this?

Mr. Handleman: You say they cannot tell the difference between the two stations?

Senator Laird: No. What happens is that there is a program on a Detroit station, such as Lucille Ball, and they prefer to look at that instead of looking at a CBC program, and then complain because they do not get Canadian programs.

Mr. Handleman: Certainly this happens.

Senator Davey: Not just in Windsor.

Mr. Handleman: It happens everywhere where you have this type of international reception. Toronto is the same.

Senator Davey: The regrettable thing is that too many Canadians prefer less common denominator programming, whether it is Canadian or American. That is just a sad fact of life.

Senator Prowse: It is a universal fact of life.

Mr. Handleman: That is right, it is a fact of life.

Senator Davey: I was curious to know if when you were in Windsor you saw the Windsor station.

Mr. Handleman: No. Our purpose in being in Windsor was to visit the Research Division of the Ford Motor Company to find out why they were doing everything there.

The Deputy Chairman: Are there any more questions?

Mr. Handleman, thank you very much. You have been very kind.

Mr. Handleman: We will have more copies of this report available. I think we will go into a second printing within the next week.

The Deputy Chairman: Thank you very much.

The Committee adjourned.

The Committee resumed at 3 p.m.

The Deputy Chairman: Honourable Senators, our first witness this afternoon will be the Canadian Broadcasting Corporation. On my right is Mr. Lister Sinclair, Executive Vice-President, and I will take this opportunity, Mr. Sinclair, to welcome you and your colleagues and to thank you very much for having accepted our invitation.

Now, I suppose that you would like, first of all, to introduce your colleagues, and then you could start by reading and commenting on the brief that you have submitted to the members of the committee.

Mr. Lister Sinclair, Executive Vice-President, Canadian Broadcasting Corporation: Thank you very much, Mr. Chairman. I would like to introduce my colleagues. On my immediate right is Mr. Ron Fraser who is Vice-President of Corporate Affairs at head office.

[*Translation*]

I would like to introduce Mr. Raymond David, Vice-President of the French network of the Canadian Broadcasting Corporation.

[*Text*]

Mr. Norn Garriock, Managing Director, TV English Service Division CBC; and Mr. Jack Trower, Director, Sales Policy and Planning.

I would like to read, if I may, a very short statement, which you have before you in both languages, and then make a short comment.

The CBC's main interest lies in the field of programming. Since domestic production of Canadian programs constitutes the major portion of its total program output, program production gets first call on the scheduled use of CBC studios, equipment and manpower. Use of these three inputs for the production of commercials for either television or radio must, of necessity, be closely scrutinized and controlled. In addition, the Corporation does not have, and never has had, any intention of setting itself up as a meaningful competitor to privately-owned firms, part of whose business may be the production of commercials for broadcast use.

In the early days of television when commercial production houses were scarce in the larger centres and nonexistent in the smaller markets, and when the quality of their output sometimes fell short, the CBC was forced to fill the gap to a considerable degree. Currently, with the growth in number and versatility of commercial production houses across Canada, particularly in Montreal and Toronto, and the very satisfying increase in the quality of Canadian commercials, the CBC, to all intents and purposes, can be said to be out of the business of producing commercials for use on any but its owned-and-operated stations.

In the past year commercial productions on each of the CBC's 18 owned-and-operated television stations has been averaging slightly more than three per month. In radio, the figure is so small as to be incapable of measurement. It should be noted here that when the Corporation does engage in the production of commercials it does, of course, engage Canadian writers and performers and these same performers are never paid less than the minimum fees prescribed in current union agreements to which the CBC is signatory.

Since the Corporation produces so few commercials, it follows that by far the bulk of the commercial messages it airs on its broadcast facilities are privately produced, either in Canada or outside of this country. It also follows that while the CBC has no direct involvement in such private productions, it is vitally interested in doing whatever it can to ensure that the commercials it airs are of the highest possible quality. As mentioned earlier, the quality of Canadian produced commercials has improved tremendously in recent years, so much so that they don't have to take a back seat to anything produced in the U.S. In some instances, they have beaten U.S. entries in North American competition.

As to the number of commercials actually being produced in Canada, that too is on the upswing. In 1968, the percentage of English-language television commercials made in Canada by the top 25 advertising agencies was 61 per cent. In 1972 that figure climbed to almost 68 per cent. On the French language side, the figures are even more impressive being respectively 68.7 and 75.9.

The figures quoted were obtained from articles in recent issues of *marketing*—copies attached for ready reference —summarizing the results of a study made by the joint broadcasting committee of the Institute of Canadian Advertising and the Association of Canadian Advertisers.

Progress is being made toward the greater Canadianization of commercials being seen and heard on Canada's

broadcast media. That has long been an objective of union spokesmen appearing on behalf of members in the writing and performing professions. All things being equal, the CBC would be happy to cooperate to the fullest degree in helping Canadian artists achieve this specific objective.

I would like, if I may, Mr. Chairman, to add a few comments having to do with the phrase "all things being equal". That is to say, we are very anxious to make sure that some people are helped, but we would like, if possible, to see that it does not happen at the expense of other people being injured. I am particularly thinking of our affiliated stations which are privately owned and which carry a part of the CBC network. I feel many of them will wish to make representations to you themselves and also wish to do so through the CAB.

Just last night, especially to attend this committee meeting, I came from the West where we have been talking to people in Prince Albert, Yorkton and Brandon, and the affiliates share a common concern, and they have asked me to express that concern to you. They would like you to know that about 40 per cent of their revenue—the figures are not exact, but we could certainly get the figures for you—is purely local advertising, purely local commercials, which they make themselves locally, and that, of course, is 100 per cent Canadian; but another 40 per cent of commercials are brought in from the United States and are very often tagged with the name of a local businessman. They are very much afraid that if there was an immediate injunction against these commercials, if there was some immediate action taken, that they would lose a great deal of revenue, that the advertisers would go to either radio or the press. Now, some of the TV stations operate radio facilities and that perhaps would not be so bad, and some of them do not. Some of those who do not and are marginal are very worried and upset about this.

Another dimension which I would respectfully like to draw to your attention is the fact that there are some commercials which it is very difficult to think of as ever being made in Canada under any circumstances, particularly commercials or promos for movies, and I must say it is rather hard to think of the promo for "Ben Hur", for example, being shot in Canada.

The final point that I would like to call to your attention is that there are many rather odd, grey areas. Very often graphic material is sent up from the States which is then made into a commercial locally. Sometimes, perhaps, the soundtrack is sent up; sometimes ads in magazines which are American magazines are sent up deliberately for use by the local stations; so it is by no means a straightforward situation, it is rather complicated.

Our affiliates do have a concern; and we share the concern on behalf of the affiliates, while at the same time sharing your concern in trying to Canadianize this by helping the producers and performers.

The Deputy Chairman: Are there others who would like to comment?

Those who would like to ask questions may start now. Senator Laird?

Senator Laird: The last remarks struck a very responsive chord with me, Mr. Sinclair. I am from Windsor and, of course, I have been continuously harping on the proposition that a special situation exists there with one of your affiliates, CKLW-TV. I see my bête noire, Senator Davey, has departed, who takes a rather dim view of the fact we are in a unique position. Might I ask you, as a starter: Do you agree, as in the western stations that you mentioned, that there exists a very unique problem with CKLW-TV?

Mr. Sinclair: CKLW-TV is certainly in a unique situation and it is a very, very difficult one. I gave the wrong impression when I suggested that the concern of the affiliates is shared only by the western affiliates. It was just that that is where I happened to have been in the last couple of days. It is shared by all the affiliates.

Senator Laird: I understood it was shared by all you mentioned.

Mr. Sinclair: And CKLW is a difficult situation.

Senator Laird: Perhaps, Mr. Chairman, I could just open up one topic and then leave it to somebody else. My impression of the reaction of this committee is—and here I suppose I should speak personally—that there is no doubt we would all like to see a reasonable amount of increase in production of commercials in Canada. It seems to me now that the general consensus of the committee, as I get the feel of it, is that we can never hope to attain 100 per cent, which you yourself have just pointed out; and the only question left, at least to my mind, is what goal should we set? In other words we have had mentioned to us by witnesses two goals; one is 75 per cent produced in Canada, and another is 80 per cent produced in Canada. Now, from your experience, what would you think of those goals? Are they reasonable? Is there a likelihood of attaining them?

Mr. Sinclair: There is a very good likelihood. I think one of the feelings that we all had was to discover, to our surprise, just how many commercials are already being produced in Canada. We had not looked into it and we did not realize it was such a very high figure.

Mr. Trower, would you like to say something about that?

Mr. J. Trower, Director, Sales Policy and Planning, Canadian Broadcasting Corporation: I believe you mentioned a figure of 85 per cent, senator.

Senator Laird: Between 75 per cent and 80 per cent.

Mr. Trower: I would imagine, if you took all the commercials seen on Canadian television and heard on Canadian radio and found the origin of them, you would find that the present figure would be over 80 per cent. I would think so, taking into account that local commercials would all be produced using Canadian talent.

Senator Laird: I am using the information which was provided in the brief of the ACA.

Mr. Trower: That would be with respect to commercials produced by the 25 leading agencies?

Senator Laird: Twenty-four agencies. Those 24 leading agencies were said to produce 75 per cent of all commercials produced in Canada.

Mr. Trower: Those are the large national advertising agencies.

Senator Laird: Yes.

The Deputy Chairman: Did they not say at that time that that is the goal? In other words, the figure of 75 per cent should be reached in five years.

Senator Laird: I do not remember whether there was a time limit.

Senator Prowse: I believe the figures were 71 per cent by 1975 and 75 per cent within five years.

Senator McElman: Mr. Chairman, I think we should come back to the major factor. That reference was to national advertising. In other words, those figures would apply to national advertising. The witness now is taking us into a new area.

Senator van Roggen: Mr. Chairman, so that we are working from one ground on this, it was quite clear—and I made a note of it at the time—that the figure they gave us of 69.8 per cent or almost 70 per cent, being ads produced by the 24 major agencies, did not include French-Canadian advertising, all of which is produced in Canada, which would up the figure; nor did it include any local station advertising programming which, again, would all be Canadian. So those two things would tend to raise the total figure very substantially.

The Deputy Chairman: Your point is well taken.

Senator McElman: Mr. Chairman, if I may, I should like to correct that again. He said that all of the French advertising was made in Canada. That is far from...

Senator van Roggen: I said the vast majority.

Senator Prowse: I believe 75 per cent.

[*Translation*]

The Vice President: Mr. David?

Mr. Raymond David, Vice-President of the French Network of the Canadian Broadcasting Corporation: If we are talking about the percentage in the French language, there is 75.9 percent of the advertising produced in Canada,, but we must add that close to 20 percent, that is 19.9 percent, is produced outside but imported into Canada and adapted, translated and dubbed by French-Canadian officers and translators, authors and French-Canadian artists so that there is 96 percent, obviously, of the national advertising which has a Canadian content; 76 percent wholly produced, conceived and created in French Canada and another 20 percent adapted, translated with, obviously often, imported pictures. This leaves approximately 4 per cent made outside the country, even in France.

Senator Laird: That is what the Artists' Union said yesterday.

The Vice-President: Mr. David, where do you get these figures?

Mr. David: I get them from the survey conducted by the English-speaking Canadian Advertising Institute. The fact is that they have differentiated between the English advertising and French advertising. Consequently, if you add to this the local advertising, well, this must be approximately 100 percent. I am talking about merchants from Rimouski or Montreal as 100 percent Canadian, as local production.

[*Text*]

The Deputy Chairman: Perhaps now Senator Laird could complete his questions, and then we will move on.

Senator Laird: I do not want to monopolize the questioning, Mr. Chairman. I will ask just one more question.

On page 2 of your brief you say:

> In some instances, they have beaten U.S. entries in North American competition.

Meaning, of course, commercials.

Mr. Sinclair: Canadian-produced commercials.

Senator Laird: Yes. Now, we have asked various witnesses about this: Have you any idea of the amount or percentage of Canadian-produced commercials which are exported to the United States?

Mr. Sinclair: That is a very good question, senator. Undoubtedly, there are some, but I do not think we really have any idea as to the amount.

Mr. Norm Garriock, Managing Director, English Service Division, Canadian Broadcasting Corporation: Mr. Chairman, we do not have the figures on that, but it certainly is something to be seriously considered. I personally know of individual commercials that have been produced and exported for use on American networks. It is unfortunate that there is no access to data at the moment to get that information, because it would be very interesting. It would be of some concern, I would think, if that percentage was very high, because I think the Americans would be upset.

Senator Prowse: It is estimated that it runs to about $6 million worth a year.

Senator Laird: That was the evidence.

Senator Prowse: We have heard evidence to that effect from two or three sources.

Senator van Roggen: Does that estimate of $6 million sound reasonable or possible to you gentlemen?

Mr. Garriock: I would say it is possible.

Senator Laird: We are concerned, too, because of the possibility of reprisals if there is an attempt to put a total ban on the importation of commercials. However, as I said previously, the feeling I get of this committee now is that that idea has been abandoned and it is just a case of all of us agreeing that we would like to do the best we can by Canadian performers, technicians, and so forth, and that there has to be a ceiling beyond which it should not go.

Mr. Sinclair: I would like to say, if I may, something which I know you are aware of, but I should like to make it clear for the record. These are areas which are really not within the direct competence of the CBC. We are expressing our personal opinions as broadcasters, and many of these gentlemen are very experienced in the field and their personal opinions are worth hearing. However, they are simply personal opinions.

Senator Laird: We realize that. Thank you, Mr. Sinclair.

Senator Buckwold: First of all, may I say that I am glad to see my friend Ron Fraser here and Mr. Sinclair, who I was supposed to meet in Saskatoon last Friday.

Mr. Sinclair: So I understand, senator. I heard a great deal about you in Saskatoon, all of it good.

Senator Buckwold: Do you feel it is a good objective to have a high percentage of Canadian content in television and radio advertising?

Mr. Sinclair: Yes, I think we do.

Senator Buckwold: Would you agree, in principle, with the idea that the more Canadian content we get, the better it would be for the country?

Mr. Sinclair: Yes. I think we feel in principal that the more Canadian the communication business is in every way, the better it is for the country. Our concern is only with this business of perhaps injuring another aspect of the industry in attempting to achieve this.

Senator Buckwold: Yes, we will come to that.

Do you feel that this can be achieved by voluntary guidelines? In other words, the industry doing the best it can with encouragement, or does it take some form of CRTC or other regulation?

Mr. Sinclair: Again, if I may, the Corporation, as a corporation, has the position which is, namely, that we show the commercials and we do not have too much outside position. If you would like my personal view, which I think is shared by some of my colleagues, I would be very glad to give it to you. I think we feel that guidelines of some kind are probably called for. Guidelines, either by regulation or by means from the CRTC are apt to be relatively flexible. The point of having guidelines is that they would make it fair across the board and would make it quite difficult for somebody to evade one area by moving to another.

Senator Buckwold: Before my colleague Senator Forsey gets into the difference bewteen "guidelines" and "regulations", which I think he rather forcibly drew to the attention of one of the witnesses, when you say "guidelines" you mean regulations, I gather from what you just said.

Mr. Sinclair: No.

Senator Buckwold: Or are you talking about voluntary guidelines?

Mr. Sinclair: I was tlaking about something slightly different, and perhaps Senator Forsey will be able to shed light on this, namely, that the CRTC often moves by a kind of intermediate document, which is a strong expression of intention, not legally a regulation, but which, at the same time, the industry tends to pay very serious attention to.

Senator Buckwold: Mr. Juneau has already laid down, not necessarily those guidelines, but certainly the warning to the industry that he expects them to voluntarily increase the number of Canadian-made commercials.

Senator McElman: That was two years ago.

Senator Buckwold: Yes, some time ago. The progress, if you look at the figures in the last couple of years, has really been quite slow. It is going up by about 2 per cent a year which, I suggest, is really not a very impressive result of his warning to the industry. Do you think it is?

Mr. Sinclair: I think, certainly, Mr. Juneau is capable of warning the industry in more spirited terms.

Senator Buckwold: But would those spirited terms not normally be some kind of regulation governing Canadian content in programming?

Mr. Sinclair: I think Mr. Fraser may well want to make some supplementary remarks about this. Very often the CRTC prefers not to have recourse to regulation as such, but, as another senator has just suggested, to express very strong sentiments, and we are well aware that it could be made into a regulation if need be. It maintains a certain amount of flexibility.

Mr. R. C. Fraser, Vice-President, Corporate Affairs, Canadian Broadcasting Corporation: I think one of the problems is that we are dealing here with a situation in which we are not entirely certain what would happen if, say, a regulation were passed at 80 or 90 per cent. I think we all agree—and there is consensus—that there are danger areas. One of the things we feel is that it might be highly desirable for the CRTC, for example, to issue another strong statement, or, even better, to have discussions with the industry to try to arrive at some kind of consensus and target, if you like on a semi-official basis, and use this period to determine what is going to happen as a result of it. Will there be very bad results? Will they not be bad results? Will they be good? What are they? Are they indifferent? If they are indifferent, if nothing happens, you can always go to a regulation, but I think it would be desirable to feel our way into this field because of the possible backlashes.

Senator Buckwold: Do you feel that there is a cultural impact on the nation as a whole through the medium of commercials?

Mr. Sinclair: Yes, I think there undoubtedly is. It is part of the North American culture, speaking of culture in the broad sense. Yes, there certainly is—that is, culture in the anthropological sense.

Senator Buckwold: Do you feel there is a significant impact on the Canadian way of life by commercials?

Mr. Sinclair: I think that is generally agreed.

Senator Buckwold: The fact is, it is true that we have 68 per cent "Made in Canada", but if you relate that to the exposure time of those commercials, the dollar value, the so-called prime time areas, the number of times they are shown, I would suggest that the impact is a great deal more than perhaps the other statistics would indicate; that, in fact, most of the time the average citizen is watching television, to quite a large extent he is getting American-made commercials, in that prime time, high-price area. Is that a fair statement?

Mr. Sinclair: I really do not know. I think we have no information on that at all. Would anyone like to comment?

Mr. Garriock: Perhaps the only comment I would like to make is that one of the common practices for large corporations, on the figures that have been supplied by the agencies, is that a high percentage of the commercials are Canadian. Then the American is added, so that they can keep their image to fewer repeats if possible. There are a lot of strategies used, whereby they will take a commercial and repeat it to death, as you well know if you watch a lot of television. I think the concern of going to radio and print, is that, for example, a large manufacturer of cars who out of ten commercials has seven Canadian and three very expensive American commercials; will spread those out so that the ten have the impact. What the affiliates and some of the agencies are, I think, concerned about is the fact that they will divert the three, which means the seven will have to be repeated more often, so that you can actually end up having a much higher repeat pattern by going to the American.

Senator Prowse: That was not the way they put it to us. They put it to us that they would shift money away from TV, because of the higher cost, to other media.

Mr. Garriock: I think they would repeat the Canadian more, which would mean more repetition than there is now.

Senator Buckwold: This concern may be a real one or it may be an unreal one, as to the shift in advertising from one media to another as a result of this type of thing.

Mr. Sinclair: I would like to reply to that with what the affiliates have been telling me in the last few days. They feel that there would be such a shift, and it would be very serious.

Senator Buckwold: Do they feel that way when you talk about your 50 per cent Canadian content?

Mr. Sinclair: They feel that if they were given a little time it would be all right.

Senator Buckwold: I do not think anybody is suggesting that overnight suddenly, on August 1, we are going to have all-Canadian. Obviously, it will be a process that will take some time. Realistically that has to be the case, if only because advertisers are planning campaigns months in advance, and you cannot just cut that out. I want to discuss this, because I consider this business of shifting from one media to another to be something of a bogey.

I did a fair amount of reearch on the earlier problem of CRTC and Canadian content in programs, and the same kind of arguments were used, that because Canadian content would be poor quality and relatively uninteresting, and all this stuff, the advertisers would not buy it, that they would spend their money somewhere else, that listening or viewing audiences would drop, and all these terrible projections would bring ruination to the industry. The CAB was, I suppose, just as vocal as anybody. I suppose the only support we had was from the CBC, although maybe deep down you have some concern; I do not know. The fact is that it worked out very well.

I would suggest that the TV and radio stations are probably doing as well as, or better than, they have ever done. Would you feel the same kind of trend would take place here, once you got into it? While it is true that there may be some additional cost, I do not think it is significant in the overall multi-$100,000 budgets of these national corporations, that because they are going to make a commercial in Canada as against the United States it will mean a very real re-assessment of where they put their advertising dollar, if TV is as strong an advertising agent as we are led to believe. Would you discuss that just a bit more, because I think it is a crucial point?

Mr. Sinclair: First of all, for the big national companies with large multi-million budgets I think you are quite right; I think they would sigh and put a little more money into it. That is not the immediate concern of our affiliates. They are concerned much more with very small outfits that do not have much money. I will be quite candid about it. I think they feel they could live with it if it were phased in over a period of two or three years, but their concern is lest it should be brought in abruptly and suddenly, and I must say I think they are quite right about the impact it would have then.

Senator Buckwold: I think I would agree with you if it were abrupt.

Senator Prowse: Have you any example of anything ever being done abruptly and suddenly by the government?

Senator Buckwold: Only income tax increases!

Mr. Fraser: I would like to add a word, if I may, appropos Senator Buckwold's request in comparing it with Canadian content. Our experience has been good in Canadian content to the point that today, for example, while the limit by regulation set by the CRTC is 60 per cent for CBC, we are achieving about 70 per cent; we go up to 73 and down to 68 per cent, but we are in there. I think the pertinent point is that, I am sure, we do not intend to stall at 70 per cent. We see ourselves going up. We do not see ourselves going to 100 per cent at any time. We do not know just how far we will go; this is an area of uncertainty; but we would like time now to pause, to consolidate and approve the quality of our 70 per cent Canadian programming. When we are satisfied on that basis, I think we then make the effort perhaps to go a step further.

I think the same thing applies to commercials. This is perhaps repeating what I said before. We have to feel our way a bit over the next, if you like, 10 per cent, or whatever it is that we want to get, to see where we are going. If this can be done on a voluntary basis, with some persuasion—it will take some persuasion—then we can consider whether regulations are needed or not, and what the practical top is, which no one knows at the moment. We know it is not 100 per cent. I think you agree, senator, on that. I think the difficulty is to find out where that figure rests and what is practical.

Senator Lapointe: You spoke about some backlash. What would that backlash be?

Mr. Sinclair: I think it was relative to the affiliates. I believe it is simply that probably we are feeling that if

it is a matter of bringing in such a thing abruptly, it would obviously improve the position of actors and performers, and some production houses, but it might have an adverse effect on some of the small private stations. Therefore, it is benefitting one part of the industry and perhaps harming another part of the industry. In that sense the affiliates have asked me to tell you this.

Senator Lapointe: Is this opposition coming mainly from the West?

Mr. Sinclair: No, it is all the affiliates. It just happens that I was in the West talking to some Western affiliates, but they all agree, and I think we all feel it would be shared generally.

Mr. Fraser: This is not a matter of opposing it in any way. It is just a fact of television or broadcasting life that, when you require an additional expenditure of funds in the major brackets the first reaction is to affect the amount of funds going into the smaller areas. They feel the backlash. In other words, for example, when we get our television service in Eastern Canada, the inevitable first result of that—to a certain extent, we do not know how much—will be a drop in revenue for some of the smaller stations in the West and East. The smaller markets will suffer.

The same thing happens here. If you have big advertisers suddenly required to spend more money in the Torontos, Montreals and Vancouvers, for a while it means that there will be less money for the Red Deers, the Moose Jaws and the Halifaxes. This is what we mean by backlash.

[*Translation*]

Senator Lapointe: Mr. David, do the commercials shown on the French network of the CBC respect sufficiently the French character of Canada, of the region?

Mr. David: You see, for many years now the advertising agencies have, besides, undertaken a large campaign aimed at the sponsors to insist, particularly on the market, that the characteristics of the milieu be respected. As you know, on the publicity level certain prizes are given in Montreal either gold cups or silver cups for the best conception adapted to the market. As the publicity also, and this to me seems interesting, is often built around what the Americans call the "star system". I think that in their own interest, most of the time, the announcers are announcers known on the market. They create publicity around a name, prestigious names. Consequently, there is by the very nature of publicity a tendency to very seriously marry the customs and the tastes of a milieu. It can be seen by this statistical tendency, which is 68 percent for CBC, and, in one year, has risen to 76, I think.

Consequently, I think that the very evolution of publicity indicates that more and more the French-Canadian buyers are seen as a particular market, unique, and even more so, once again, in the fact that within the very rules of publicity there is a tendency to have the message accepted with known elements in the culture to which it is addressed, in the cultural milieu to which one is addressing oneself.

Senator Lapointe: Do you estimate that there is enough at the moment?

Mr. David: I think so, yes. As I say, the large majority of the commercial national advertising is conceived and produced here. As far as the local is concerned, I would say that we should reach 100 percent because it is difficult to see how local advertising could address itself to outside Canada to produce its own commercial messages, but I think yes.

Senator Lapointe: Do you sometimes receive complaints where certain advertising is too American or something similar?

Mr. David: Yes, especially when the dubbing is badly done. It happens, you know, that the sound does not follow the lips. At that moment it is flagrantly obvious that it has been borrowed. Furthermore, I think that this does not add even on the publicity level. Then we have complaints. But we also have complaints in our own broadcasts when they are badly dubbed. However, on the whole, if you look at the sponsorship you will see that it is a sponsor who has called on all well-known names be they either geologists, for example, or Pierre Lalonde, or Willie Lamothe. Consequently, these are people known by the public and it is to them that we go to sell merchandise.

Senator Lapointe: Yesterday we heard the representatives of L'Union des Artistes. They were proclaiming the fact that there are many French-speaking actors who do not earn more than $1,000 per year. They figured that if a larger number of commercials were made in Quebec this would help the actors, those who earn less than $5,000 per year. What do you think of this?

Mr. David: Well, you see, it all depends on the statistics one uses. As I have said, of course for the actors, dubbing will earn less than an original production. This to me seems rather certain. But, as I have said earlier, 96 percent of the advertising has Canadian content and the dubbing requires Canadian actors. I do not see, as far as I am concerned, that there is a very high profit. But it is much more in the dramatic production than in the extension, let's say, of the Canadian participation. I do not see, at the moment, unless there is a general increase in publicity, I do not see how they can increase this substantially. I say "they" because I am talking more about advertising agencies, I do not see how it is possible for them to substantially increase the revenue of actors through publicity because the proportion of what is already done here is considerable.

Senator Lapointe: In the figures which are supplied to us on the subject of making advertising more Canadian, we are given a certain percentage which appears to be satisfactory, but in these commercials, so called Canadian, are there not American stars and, sometimes, more American actors who appear than Canadian actors?

Mr. David: I do not believe so. You see, when we say that 75.9 of those are produced in Canada, it is certainly at that moment with French-Canadian actors. American stars can be seen—I do not have any in mind—maybe in certain commercials, but, there again, dubbed. Once again, as the American star has less appeal for the televiewers than a Canadian star, because the Canadian star, and this is obvious in our listening surveys in general, the Canadian programmes are far more listened to than dubbed programmes. There is only one dubbed pro-

gramme which is really very popular, that is "Dr. Welby". As for the rest, soap-operas, all the Canadian productions on the French side are better received than imported programmes. Consequently, I think that the advertising agencies try first to involve French-Canadian stars in their publicity. Really, I do not know of many American stars who have made a career in the publicity world of French-Canadian television.

Senator Lapointe: Yes, but I am talking of the English-speaking television, because it is more natural, obviously. It has been said, on occasion, that it is very difficult for an actor in Canada to take part in an American commercial, and he may even be refused the granting of a visa to go and participate in the recording of the commercial, whereas here, it seems, in Canada, we are far more indulgent and far more generous in the larger sense of the word to allow American actors to perhaps take part in commercials. Do you think this is true?

Mr. David: Well, really, I do not have an opinion on this, because it is probably more on the English side that a situation such as this can happen. But certainly not on the French side.

Senator Lapointe: Would Mr. Sinclair answer this question?

Mr. Sinclair: Yes, I agree with Mr. David on the English side. Obviously, as you say, we are a very, very liberal country in the general sense of the word, but on the French side, it is really something else, there are not many Francophones in the United States.

The Vice-President: I would have a question for Mr. David, to follow the type of question which Senator Lapointe has been asking. In the brief which was submitted yesterday by L'Union des Artistes, it says:

> But, it nevertheless remains true that our television market is not only invaded by programmes which come to us from all Francophone countries, but also all long films and the majority of American or foreign programmes which are shown on our airwaves, are dubbed in French.

Is the CBC trying to correct this situation, because, if it was corrected, it would obviously help our own actors to undertake more work?

Mr. David: It probably refers to the general programme. First of all, we had last year, Mr. Fraser underlined it a moment ago, much like the English network reached a proportion of 68 percent of our programming which consisted of Canadian productions. This, therefore, leaves only 32 percent from outside. From outside, perhaps in a fifty-fifty proportion, grosso modo, half comes from Francophone countries, Belgium, Switzerland, France, the other half from English-speaking countries, especially from the United States, obviously and a bit from Great Britain: "The Avengers", for example—or from Australia "Skippy the Kangaroo". But, in great part, these programmes are dubbed in Montreal. There is, in Montreal, a large business of dubbing which has, everything considered, been set up at the insistence of the CBC to have these programmes dubbed in Montreal. Last year there were more than 15 foreign series of programmes, American, dubbed in Montreal. "The Name of the Game", for example, is dubbed in Montreal. Consequently, it is no longer right to say that most of the programmes are dubbed in France, as the majority of programmes are dubbed in Montreal. One could produce statistics on the subject of programmes dubbed in Montreal. You see, the rule followed is as follows: when a distributor offers us a series, if we are the first takers, we insist for the series to be dubbed in Montreal. If, obviously, the first takers are Belgium or France, at that moment it is only normal that it be dubbed over there. We, because we do not do the dubbing ourselves, we buy a product, so we are told that it should be dubbed. Obviously, the series is presented in its original English-speaking programme; if it appears interesting, we buy it. At that moment, we say to the distributor that we are interested in purchasing the rights, on the condition that they be dubbed in Montreal. This is how, in one year, we had $2 million worth of series dubbed in Montreal proper. Furthermore, there are many businesses—take programmes like "The Galloping Gourmet"— which have five programmes per week dubbed in Montreal. "Civilisation" which is shown presently—"Civilization"—this great prestige series from the BBC is dubbed in Montreal. It is presently shown on the network. Therefore, the dubbing industry came here obviously prepared. However, our objective presently is to develop it as much as possible, without this obviously ever attaining a totality because, like everyone, we are playing on the international market, but the fact is that for actors this is a source of revenue developed by the CBC. I think that Télé-Métropole has also involved itself in the dubbing of Amercian programmes by Canadian artists.

Senator Langlois: Mr. David, could you tell us what is the percentage between these foreign series that you obtain as second takers which are dubbed outside the country, in relation to those series dubbed in Canada? What is the percentage, in your purchases?

Mr. David: Well, listen, I cannot tell you exactly, immediately. If Mr. Senator wants it, we have great facilities, we can find the figures and give them to him.

Senator Langlois: This could be forwarded to the Chairman.

Mr. David: Very well.

[*Text*]

Senator Graham: Mr. Sinclair, I want to go back to a percentage which you used after your opening remarks in expressing the concerns of your affiliates in respect of, I presume, the jingles and the I.D.s that they use in producing their local commercials and these jingles and I.D.s which they bring in from the U.S. Is that correct?

Mr. Sinclair: Yes. I must say, senator, that I think the affiliates should speak for themselves. It is a courtesy that you are allowing me to say something on their behalf. It is much more than that. They would bring in the entire commercial from the U.S. and then just put a tag on the end identifying that the local agent for such and such a product is so and so. So it is the whole commercial that would come in from the U.S.

Senator Graham: Incidentally, the 40 per cent figure was just a percentage figure that was given to you? It seemed too high to me.

Mr. Sinclair: That was agreed by two of the affiliates, certainly, but that was about it. Perhaps Mr. Trower would like to make a comment on it. Again, we are just expressing personal opinions. They were very insistent that I should pass on that figure, if I got a chance to, and I am happy to take the chance.

Mr. Trower: The senator may be somewhat confused. The 40 per cent is local revenue. It is not commercials. That would be fair enough on the average.

Senator Graham: Forty per cent of the local revenue is identified...

Mr. Trower: No, no. Forty per cent of the revenue comes from local sales, comes from the local businessmen.

Mr. Sinclair: Actually, there are two figures. They told me that there were two figures. One, 40 per cent, was entirely local and the other was that there is an intermediate range which was being brought in from the United States and being used, and I am inclined to think that perhaps that figure may be a little high, but that was the figure that was given to me—another 40 per cent.

Senator Graham: I wonder whether or not the 40 per cent of the commercials used was 40 per cent of the total commercial content.

Mr. Sinclair: They were talking about total revenue in the station. I do urge you to remember that these figures were given to me orally. It was a matter of passing it on, if possible. I think it is very important to these affiliates and that the CAB generally should give you a brief. I think they should give you a brief with much harder facts than I am giving you. It is just that I am trying to indicate a concern, which they said they feel and which we share, and to give an impression of the order of magnitude of that concern as it was passed on to me by them.

Senator Graham: Are there many companies that you know of that are producing jingles or I.D.s. in Canada?

Mr. Sinclair: I think there are a great many.

Mr. Garriock: Very definitely!

Senator Graham: Some of the witnesses earlier seemed to indicate that the stations—at least this was the impression that I got—were importing all of their jingles and I.D.s. from the United States.

Mr. Sinclair: Norn, would you like to comment on this? It certainly is not true in the larger markets. It may be true in very small stations.

Senator Graham: Do you have any border stations or affiliates carrying advertising for American firms?

Mr. Sinclair: CKLW-TV in Windsor.

Senator Graham: That is an affiliate?

Mr. Sinclair: Well, it is in a strange situation. It is sort of a partly wholly-owned subsidiary.

Senator Graham: Do you have any shares, Senator Laird?

Senator Laird: No, John Bassett owns them all. By the way, CBC is going to acquire CKLW-TV entirely by 1975.

Mr. Sinclair: We own 25 per cent at the moment.

Senator Forsey: The only thing I wanted to raise, which perhaps would be better raised with Mr. Juneau when he comes, although it is possibly not out of place here, is that I was doing a little calculating yesterday on the figures that we were given—you know, the 61 per cent in 1968, 64.6 per cent in 1969 and so forth. There seemed to be some tendency to say, "Well, things are going on pretty well, you know. We are making progress at a not insignificant rate." And there seemed to be a feeling, I thought, that this strengthened the case for your exhortation—which, incidentally, I think Mr. Juneau has been engaged in already for some little time—and I wondered what it would look like if I made a simple calculation of the progress from 1968 to 1969, and then looked to see what the present situation would be if that same rate of progress had continued. The results were a little bit startling. Now, that may not be altogether a fair sort of thing to do, but if you look at the 1968 to 1969 advance, it is quite appreciable. If I remember correctly, 3.6 on 61 works out to something like 7½ per cent. I do not have my calculation here, and I am speaking from memory. Then you find that from 1969 to 1970 it went down rather markedly from 64.60 to 59.5. Then in 1971 it was barely above 69. But if you had a continuous increase at the same rate as from 68 to 69, you would have arrived now at a figure running close to 80 instead of the figure we have, which is 67.8 This made me feel a little bit pessimistic about the effects of exhortation or even exhortation reinforced by some fairly stiff tut-tutting. I remember when I was on the BBG I acquired a certain skepticism about the effects of this sort of thing. I did not arrive at the conclusion that the private broadcasters were quit as susceptible to exhortation and quite as anxious to get on with their good intentions as, perhaps, they might be. Now I may be a little bit prejudiced—I don't know—and I may have a jaundiced view of the private broadcaster as acquired from my experience in that context, but I don't feel altogether the same confidence about these guidelines short of regulations as some people do.

That is by way of comment more than anything else. If any of the witnesses would care to comment on the comment, I would be interested to hear it.

Mr. Fraser: I think exhortation, just speaking generally, has certainly worked in the case of Canadian content, and where it was not practicable this was accepted by the CRTC only after a great deal of thorough investigation by accountants and people like that. It was not just a surface thing. So the climate today with the CRTC has changed, I think, Senator Forsey, from the days when we were enjoying the BBG. That was a very pleasant stage to go through, and it was effective in many ways, but today it has become far more businesslike.

Senator Forsey: I think the CRTC is a great deal tougher than we ever were, and I admire them for it. I have an uneasy conscience about the way we all tended to be all boys together with the private broadcasters. I became more and more uneasy about that and eventually it blew up.

Mr. Fraser: I think it was probably necessary to go through that stage because you, in turn, did come out

of the "real old chums together" when the CBC board controlled everything, so we have gone through these three stages. But I think today the CRTC has a fairly good track record, whether talking about FM or radio. Taking the job that they did on radio, they did it with a very minor regulation, but actually it has been exceeded. It is meetings such as this, it is the interest of Parliament, the Senate and the House of Commons, that causes this type of thing to happen. I would not be pessimistic about giving it a try to see if it works. Then if it doesn't work you will have to do something else, but I think it is worth trying.

Senator Denis: Excuse me for speaking such bad English. I don't know if it is because of the imported commercials! I would like to ask you who imports the American-made commercials. Is it the radio or the TV station? Is it the advertising agency? Or is it the individual—the customer?

Mr. Sinclair: I think Mr. Garriock has the answer to that.

Mr. Garriock: Mr. Chairman, the commercials are purchased by either the advertising agency, representing a large corporation or company, or directly by the company. This depends on its relationship and whether it has an agency. For instance, the Canadian Broadcasting Corporation does not buy commercials at all, and private stations do not buy them. The exception is that they will buy them for local sales, as was pointed out by Mr. Sinclair. They may buy a commercial for a product like ice cream, or something of that nature, and then put the name of the local dealer on it. So while local stations may purchase directly, CBC does not.

Senator Denis: Whether it is imported by the advertising agency or the company, when they buy a program, do they see that the Canadian identity or Canadian culture is taken care of, or do they buy those commercials because it is cheaper? On the other hand, is it because that kind of program is better suited to the selling of the product they want to sell?

Mr. Sinclair: I suppose it is the last reason. After all, they are putting on the commercials to sell the product.

Senator Denis: So culture or identity has nothing to do with it?

Mr. Sinclair: Except insofar as it will not sell the product unless it relates in some way to the identity.

Senator Denis: Do you agree that sometimes it is the opposite—using slang language, for instance, or songs out of tune or, as Senator Forsey said, big noises or funny noises?

Mr. Sinclair: That certainly describes many commercials.

Senator Denis: If they are imported by advertising agencies, and the writers and artists complain that they are being deprived of jobs or they are being prevented from having higher revenue—do you think that those importers are the first people responsible for the import of American-made commercials?

Mr. Sinclair: I think they are, yes. And we say, this is not a matter of driect concern to the CBC, but we are very sympathetic.

Senator Denis: Why then do they want the government to bear the responsibility for a ban or for a change in the situation when it is their own responsibility? Would it be possible, for instance, for them to have among themselves the regulation or a consensus in accordance with which they would say, for instance, "Well, we won't sell to the Canadian customer more than 20 per cent of our time, or more than 20 per cent of what is heard in Canada"? Would it be possible for a radio station or a TV station not to buy or not to import or make available more than so much?

Mr. Garriock: Mr. Chairman, I think the comparison here can be made on purchasing American programs which stands up on comparing it with purchasing American advertising. We will take a show called "The Julie Andrews Show", produced in the United States, owned by Sir Lew Grade of ATV in Britain and purchased by the ABC network in the United States. Now a show of that type costs approximately $300,000 per show. That would be a guaranteed minimum. I know the actual cost, and it is very close to that. A show of that type would be purchased by a large network in Canada for a sum in the area of approximately $5,000. That is the differential. The same differential applies on commercials. If you have 222 million people supporting a commercial in the United States, then they can afford a helicopter to fly the car to the top of that place in the canyon to make an impact on you, and the commercial will cost, say, $25,000. A comparable company in Canada would not pay $25,000 for a commercial in Canada. It could not afford that because it is out of ratio for distribution. So I think the issue, with due respect, is exemplified by asking a commercial company "X" if they intend to increase their advertising budget in order to maintain that quality. That company might have a formula, as most companies do, which I am sure you gentlemen are more familiar with than I, for the amount to be spent on advertising. They would have to repeat those commercials they are making in Canada in order to amortize and keep the budget constant for what they are missing. They presently buy those commercials very reasonably. The issue is, would they pay much more and increase the number of artists in Canada? In my opinion, that is one of the key issues.

Senator Denis: You have just said that they would buy an American-made commercial because it is more suitable for selling their product. If there is a ban, or a reduction in such imports, is there any danger that Canadians, rather than listening to Canadian networks, would transfer their attention to cablevision? The advertising would then reach less viewers, with consequent lesser value. This would cause a reduction of the fees, which are based on the number of listeners?

Mr. Sinclair: I wonder if we could take great care to distinguish between American programs and American commercials. I do not believe the viewers go from one channel to another for the commercials. They may follow the program, but we are only discussing commercials.

Senator Denis: They are included.

Mr. Sinclair: No, they can be produced separately. The program is one thing and the commercials something else, which can be inserted as completely separate units.

Senator Denis: The commercial is different, but it is included with the movie itself, for instance.

Mr. Sinclair: No, it is not; it is inserted afterwards by the station. They will buy, for example, "The Julie Andrews show" as a program. That program contains several places known as "availabilities," which describes them exactly. They are places available for the insertion of commercials.

[*Translation*]

Senator Denis: I only have one question for Mr. David concerning French culture or French identity. Do you not believe that American imports affect us a great deal?

Mr. David: You see, I think that on the one hand, there are contributions that foreign television networks can bring to our programming, which are extremely positive. For example, I am thinking of programmes such as 'Civilization" or "Elizabeth R", or there will be "Leonardo da Vinci", translated into French. I do think that on one hand there are many programmes which are of unquestionable quality and which are, for viewers, an addition to their cultural baggage. I also think that when they are well chosen, programmes like "Dr. Welby", for example, are seen around the world. The CBC adds them to its schedule but also France, Belgium and Switzerland. I think that American programmes, especially American series, such as "Father knows best", or "Bewitched" are seen practically everywhere in the world. If the proportion of our programming was such that it represented 60 percent, well!, I think we should question ourselves, for there would certainly be a loss of culture. But for the moment, and I am thinking particularly of the French network, there is always at prime time at least 75 percent of Canadian production. It leaves 25 percent for productions, not only American, but French and Belgian.

We, because of the language, can ensure a good balance in the imports. This represents, I think, a window on the world. We would not want, either, to live in a milieu which is so closed without being able to profit by what the outside world has to offer. I think, that, on the whole, particularly because of the taste of viewers, this taste spontaneously goes towards Canadian productions.

Senator Denis: Excuse me, but, whether we're talking of commercials or programmes or cinema and so forth, if I am to believe Mr. Sinclair, the client who buys the programme or the broadcast, whether it be advertising or a film, this client is trying to sell his product, but he worries more or less about the culture and the identity. I understand that when French identity is concerned, or French culture, well! the radio and television networks personally look after this. But, is the sort of advertising or presentation that you have in French networks where at every third sentence there is cursing—where at every third sentence slang is used, where, for example, there is racism shown, etc., etc.—often, or more often than not—I wonder if this French culture should be encouraged, or if it would not be a good thing that from time to time we have a programme in French?

Two days ago, I believe, and this is an example among many, I was listening to a play or a film called "Vive la France", where, at every third sentence the words "Maudit", "Calvaire", were said and this came from our people in Rivière-du-Loup. The husband says "j'me suis effouèré"—and his wife answers "It's not French, you should say 'effoiré' ".

Do you think this French culture should be encouraged? Otherwise, should we not import a few good films, or a few good French commercials, in good French? If I do not speak French properly, myself, it is probably because I have not learned it from radio and television networks.

The Vice President: These are many questions.

Mr. David: Yes, these are many questions and we are getting away from advertising. Yes, for sure, the language problem is a very special problem of the French network.

You have had programmes, for example, of the folklore type; I'm thinking here of "Belles Histoires". Our announcers certainly speak impeccable French. But, when you come to dramatics, you have to respect the veracity of the characters.

Obviously, it is not possible to have a lumberjack, speak like a scholar. Lumberjacks, what can we do about it, they'll say "toé" and "moé'. I think that if we had them speak like scholars...

Senator Langlois: It wouldn't be bad!

Mr. David: No, but he will say "en'oueye". If he says: "Envoie-moi le balai"—well then! the people will whisk him away, they will not listen.

I think there is a distinction to be made here. I think that presently, there is a slang school, with, at its head, Michel Tremblay the dramatist. It is a new expression of a social transformation. At that moment, we cannot arrive with a dogma such that we eliminate from the airwaves these new currents that can be rejected, but there are many personal opinions.

Senator Denis: "Can" we or "should" we reject?

Mr. David: As far as I am concerned, I think that we must respect reality because reality is such, if you call upon these characters.

Now, and I see to what you refer, there are also documentaries where we present reports, where we interview people. Now, you know, these people will not change their language because they are speaking on television. They will express themselves on television as they express themselves every day. We cannot impose censorship.

Senator Denis: Here I must stop you. When you conduct these interviews, you have many, but they are not all necessarily shown. Consequently, those who are crude or those filled with things we should not learn, are put aside, you make a choice. They are all, therefore, in this type of interview. The lumberjacks must be rich in salary because they address themselves more often than those who speak French.

Mr. David: Well, listen, I do not have statistics but one thing is certain is that when you conduct an interview surely it is obvious that we cannot present scandalous things. We do not want either to hurt or come against the sensitivity of the public. But, it could very well happen that there is a truth there which can be unpleasant but must be shown, without which we would

have to impose censorship and let only what can be acceptable for any milieu go by.

Senator Denis: You have no form of censorship?

Mr. David: Not censorship, no, but we exercise judgment. There are things, obviously, where it is a question of taste. There was, for example, last year a series which was cancelled after two programmes because it was found to be too violent. It was a soap-opera. It was found to be too violent, but not strong enough on the dramatic level for it to continue, for it to be accepted spontaneously because it was well carried by the drama. Therefore, we cancelled it. We view all films and, apart from that, they are scheduled at an hour or another, depending on the audience to be reached.

But to return to slang, I think that, actually, in drama particularly, slang is essential to express all the French-Canadian reality. I think that in drama you have the private aspect, not that it is not an encouragement to speak like that because it is not a school, drama, but what can we do, we are showing a certain milieu. We are trying to show it with as much credibility as possible. It is obvious that Séraphin does not speak at all like Mrs. Velder.

Senator Denis: They must be really dangerous, the programmes that you eliminate!

Do you remember one or two years ago, a play entitled "La Saignée", where religion was laughed at, where racism was shown, where there was tentative rape of a relative, where people paraded with a cross, when they are going to kill a pig. If you are going to let this type of programme go by, My God! those that you have refused must be really dirty?

Mr. David: I do not remember the details you have given of "La Saignée". I remember that at the end there was a pig bled.

Senator Denis: Yes, you had Gilles Pelletier as the principal actor and we were present at the bleeding of a pig.

Mr. David: Yes, I remember having seen that.

Senator Denis: The pig is bled, at the end, in the presence of his niece. They wallowed in the blood, he tried to rape his niece and after there was a procession with a cross before the bleeding of the pig. Do you remember that?

Mr. David: I remember that. I remember very well that they were obviously tough scenes but which were treated with a great deal of tact. I remember very well.

Senator Denis: I do not have any other questions.

[*Text*]

The Vice President: It is a very interesting question, but as we have another witness... perhaps Senator Denis and Mr. David could continue their conversation later. We have another witness, and we would like to complete our hearing by 5.15 p.m. Three other senators have indicated their wish to ask questions.

Senator Prowse: The ACA suggested... I will read you the figures:

> We would expect to see some 71 per cent of Canadian TV commercials produced in Canada by 1975 and 75 per cent achieved within five years.

This is assuming that these figures are confirmed. In view of the fact that these are the fellows who are paying for it, I would assume that we would be correct if we thought that in entering into negotiations they would say, "Okay, we can go to 75." We have suggested 100. So somewhere between 75 and 100 will be the point we are prepared to settle for. But where—Halfway?

Mr. Sinclair: I would not dream of suggesting to honourable senators that I knew more about human nature than they did. I think you have to make an open guess on that.

Senator Carter: My main question has been answered. However, I would like to ask a supplementary arising out of the conversation between Senator Denis and Mr. David.

The Deputy Chairman: Was there any murder in Newfoundland?

Senator Carter: Not yet. I have often wondered, does the CBC have any particular standards or criteria by which they select commercials? I am talking about commercials, ordinary short commercials. Has the CBC ever turned down a commercial and said, "This is too silly."?

Mr. Sinclair: We most certainly do. We have a very strict commercial code. We have an entire department, Commercial Acceptance, which scrutinizes commercials very carefully. I am sure Mr. Trower will be happy to tell you a great deal about it.

Mr. Trower: We turn down a lot of them.

Mr. Sinclair: We turn down a lot of them. We take a very careful look at them. We do not take a look at whether they are silly or not. We do try to take a look at whether they are truthful or not.

Senator Carter: I am thinking about whether the commercials are geared to the level of the public intelligence. Some of the commercials you see for soap, for waxes, for selling gas and other things, are just plain stupid, and you are really insulting people and saying, "This is what we think is your level of intelligence!" I am wondering whether you really select them. If there are some that you have discarded, and you still show some of those that I have seen, I still cannot say that I have a very high opinion of your standards.

Mr. Sinclair: Our standards are not directed in that way, I am afraid. They are directed towards truth in advertising. They are directed towards some products that we would not like to see advertised. They are directed towards trying to prevent advertising from misleading the audience. Those are the main things. If the advertiser then wants to treat the audience as if they were fools, then I think we have to say that is their business and not ours.

Senator Carter: But aren't you saying it too? When the CBC sponsors this, aren't you acquiescing in their estimate?

Mr. Sinclair: We do not sponsor it. It is they who are sponsoring it. We permit it to go on. We like to feel that the audience is perhaps a little more intelligent than people sometimes give them credit for, and can make their own judgments.

Senator Carter: I am sure they are. I don't think they sell the product—at least, not to me.

Senator van Roggen: The thing that has been concerning me during these hearings is what I described this morning as absolutism inherent in the wording of the motion of Senator Buckwold:

> That the Standing Senate Committee on Transport and Communications be authorized to examine and report upon the question of the advisability of steps being taken to ensure that all radio and television commercial advertising broadcast in Canada ...

...be made in Canada; and then particularly the brief of the Canadian Broadcasting League this morning, which said the same thing:

> that all commercial content of radio and television programming be produced in Canada...

Senator Davey, who is not here, adheres to this point of view. Needless to say, I don't. I have two questions. First, I noted a quote of Mr. Fraser earlier this afternoon when he described that you have now reached the figure of approximately 70 per cent in the area of Canadian production of commercials and that as you try to move forward ...

Mr. Sinclair: Programming.

Senator van Roggen: Programming. I would think you would want to find out what the practical top limit would be. It would not be 100 per cent. Would you be prepared to make the same statement relative to commercial production? If it is 68 per cent, or whatever it might be right now, obviously it could go higher. There is a top limit, and that is not 100 per cent.

Mr. Sinclair: Again we are expressing our personal views; it is not the corporation's position. Our Brandon affiliate, I think, raised the point very well to me only yesterday, that it is very difficult to imagine the promotional commercials for movies being all, 100 per cent made in Canada. It is hard, as they suggested, to picture a promo for "Ben Hur" being made in Canada. I think it is not hard to think of examples in which an absolute policy would be very difficult and very trying to enforce.

Senator Prowse: Unless we have all movies made in Canada.

Senator van Roggen: My second question: If we were, however, to drop a curtain and say commercials must be 100 per cent made in Canada, would it, in your opinion, produce a counterproductive result in stopping the free flow of ideas and technical information? In other words, would the quality of commercials made in Canada deteriorate as a result of that over a period of years? Can commercial manufacturers, being denied the exchange that is going on to some extent now with Canadian commercials being made in Canada and exported to the States?

Mr. Sinclair: I think that is very hard to reply to. I would be inclined to think that over a period of years it would not deteriorate. It might deteriorate for a while. There certainly is a free exchange because, you know, people do see an awful lot of American commercials all the time. No matter what we do they come in on cable, across the border; they are there.

Senator van Roggen: But I have in mind that if you take this step of making 100 per cent production in Canada that on the horizon are the suggestions that the cable companies be required to delete the commercials coming across the boundary and that Canadian commercials be slipped into those spots.

Mr. Sinclair: That would apply certainly to areas reached only by the cable, but an example is KVOS in Bellingham which exists for broadcasting to Vancouver. The Pemberton station exists to broadcast up to Canada.

Senator van Roggen: I do say I can get Bellingham without cable.

The Deputy Chairman: Is that all, Mr. Sinclair? I would like to thank you all very much. Your comments have been very interesting.

The Deputy Chairman: Bienvenue, Mr. Juneau and your colleagues. I would like to express, on behalf of the members of the committee, the most hearty welcome here and to thank you very much for having accepted our invitation today. I do not know if you have some comments to make or you have prepared a brief?

Mr. Pierre Juneau, Chairman, Canadian Radio-Television Commission: I have prepared some comments, Mr. Chairman. It depends entirely on you, whether you prefer that I read those comments right away or whether you prefer to start with questions.

The Deputy Chairman: Well, what is the wish of the committee?

Senator Langlois: The comments should be read now.

Mr. Juneau: It will take five, six, seven minutes, maybe.

The Deputy Chairman: That will be fine. Before you do so, Mr. Juneau, would you like to introduce your colleagues?

Mr. Juneau: I would like to introduce Mrs. Pearce who is a full-time member of the Commission, Mr. Thérrien, who is a full-time member of the Commission, and two senior members of the staff, Mr. Hart and Mr. Shoemaker.

The Deputy Chairman: So you can start, Mr. Juneau.

[*Translation*]

Mr. Pierre Juneau, Chairman, Canadian Radio-Television Commission: Mr. Chairman, Messrs. Senators, I would like first of all to thank you for your invitation to discuss with you a topic which the Commission also considers of great importance.

I have tried to limit as much as possible the length of my intervention, convinced that the witnesses which have preceded me during these last days have already sufficiently described the various aspects and the various attitudes concerning this question. My exposé will therefore concern itself with the opinions and past and present intentions of the Commission.

[*Text*]

For a number of years, the CRTC has been very much interested in seeing the production of television and radio commercials in Canada increased to the maximum extent possible. The Commission agrees with the comments about the significance of this matter made by Senator Buckwold in his speech to the Senate some weeks ago. Suffice it to say that we consider the production of commercials, particularly in the case of television, to be important not only to Canadian performers, but also to Canadian production companies, writers, directors, technicians and laboratories—in short, important to the whole Canadian production industry. In the case of performers, income from commercials is second only to payments by the CBC, and is not far behind them each year.

Several years ago, the CRTC considered establishing a regulation forbidding the use of any television commercial not made in Canada. However, it was decided not to take such formal action at that time, partly because until then no direct appeal had been made to advertisers to make their commercials in Canada. Consequently, at a commercial production seminar held in Toronto in the late winter of 1970, I expressed the opinion of the Commission that advertisers should regulate themselves in this regard, and make their commercials in Canada. In a speech to the Association of Canadian Advertisers in May of last year, I reiterated the view that advertisers should voluntarily improve their performance in this respect so that formal regulations would not be necessary.

I might explain at this point several other reasons why the CRTC was somewhat hesitant then about imposing a ban on the use of imported commercials. The Commission considered it quite possible that, if the commercial production expenses for the advertising in Canada of some products were to be increased dramatically, these products simply would not continue to be advertised on television. Thus, a significant amount of revenue would be lost by Canadian television stations and the financial support for Canadian program production and extension of television service would be reduced. This revenue loss would be to other media.

The Commission also considered that some companies might be influenced to transfer their purchases of time from Canadian to U.S. border stations and thus aggravate an already serious revenue drain. It seemed reasonable to expect that the companies which would be most affected by such a regulation would include the ones most likely to look across the border for ways to circumvent it. It should be remembered that these factors were being considered at the very time the Commission was beginning a determined effort to get private broadcasters to increase their Canadian program production activities and extend their services to smaller communities across the country. Subsequently, following the release in July, 1971 of its policy statement concerning cable television, the CRTC asked the government to extend the provisions of then section 12A of the Income Tax Act (Section 19 in the new act) to include broadcast advertising. Such action, along with the application of the Commission's policy concerning the deletion by cable television systems of commercials contained in U.S. channels carried on cable in Canada, would probably check any move by advertisers in Canada across the border.

Moreover, there was, and still is, concern about taking any action that might jeopardize the chances of Canadian performers obtaining employment from time to time in the U.S. If the border were to be closed to the importation of U.S. commercials, counter measures might be undertaken on the other side. Such action conceivably might make it more difficult even to produce programs in Canada for export to the U.S. However, in recent years, it has become increasingly difficult for Canadian performers generally to obtain work assignments in the U.S., so it might be said there is now not much to be risked. At the same time, American principal performers, directors and cameramen continue to be brought up to Canada for the production of commercials to be use in this country.

Several years ago, a separate, but related, effort was made by the Association of Motion Picture Producers and Laboratories of Canada. The producers requested the Department of Revenue to change the customs tariff with respect to the importation of foreign commercials, so that duty would be assessed on the actual production cost of the commercial. As you know, the assessment is on an arbitrary valuation based on the number of feet of film or video tape, without regard to the cost of the production. However, when the producers realized that their desired change would, at best, be self-defeating they withdrew the request. The problem is that, because of GATT agreements, Canada would be obliged to make a similar change in the calculation of domestic sales taxes on Canadian production, and the resulting increase in the cost of Canadian commercial production would more than offset any advantage gained by an increase in import duties.

The CRTC has watched with considerable interest to see what effect the appeals to advertisers to produce their commercials in Canada have had. We have noted, in their current commercial agreement with ACTRA, the advertisers and agencies have undertaken to produce more in this country and have established a committee to work towards this objective. But by the advertisers' own estimates progress has been too slow. As you know, they estimate that approximately 68 per cent of the English-language commercials used in 1972 were produced in Canada. The 1969 figure was 65 per cent.

It must be remembered that these estimates result from the combined practices of many companies. The range is from companies who use only imported commercials to companies who use only commercials produced in Canada. If, for example, every company used at least 60 per cent Canadian-produced commercials, the industry figure would probably be something more than 80 per cent. Too many companies, including some of the largest, are still producing few, if any, commercials in Canada. Apart from any other consideration, this is not fair to those companies, including many subsidiaries of foreign companies, who must, or choose to, produce most or all of their commercials in this country. The French-language Canadian commercial situation appears to be

somewhat better according to the advertisers' estimates, with about 76 per cent being produced in Canada in 1972. However, this is still not an outstanding industry performance and in our view leaves much to be desired.

The Commission has again thoroughly reviewed this matter and has concluded that in today's context, the situation now calls for formal regulatory action. Accordingly, the nature of such action is now being considered. Of course, there will be consultation with the various industry groups concerning the details and effect of this action. I believe you are familiar with the Commission's public hearing process. I might say too, in this respect, that the Commission will certainly take into consideration the conclusions of this Committee. We shall also be very interested in the report of the Province of Ontario Select Committee on Economic and Cultural Nationalism when it is released.

The Commission has been working for some time on the preparation of its own survey of the use of Canadian commercials, including details of the elements involved and a comparison with the number and value of imported commercials originally produced for use elsewhere. It is not an easy matter to obtain this information, but we think now we should be reasonably successful.

In the case of radio, the Commission considers there is no doubt that a 100 per cent Canadian commercial production requirement should be established. In conclusion, the CRTC is convinced the necessary competence exists in Canada and that substantially improved performance can now be required of advertisers in this country. The Commission is of the opinion generally that television commercials are extremely important showcases, both for the best Canadian creative talent and for Canadian companies and products, and consequently should be conceived and produced within our borders. It must not be forgotten that extremely important values are communicated through commercials with even more precision, often, than through programming. It is important that these values grow out of our society, not out of another, perhaps inappropriate milieu, with different institutions and public goals. Canadian commercials should be connected with the Canadian imagination, with Canadian needs, and be able to reflect better the use and role of products and services in Canadian life.

The Deputy Chairman: Thank you, Mr. Juneau. We will start the questioning with Senator McElman.

Senator McElman: Mr. Chairman, I should like to start with what appears to be the accepted viewpoint that commercials, particularly television commercials, do have an influence on the Canadian lifestyle. We have had, a bit more than is necessary, the American influence exercised through commercials. I should like to stick to the national advertising accounts in leading up to my question. The production facilities for English language commercials for national accounts are primarily in Toronto. Is that correct?

Mr. Juneau: I would say, without hesitation, that there are excellent facilities in Montreal, and I would be prepared to say that there are probably very good facilities in Vancouver.

Senator McElman: For national accounts?

Mr. Juneau: I would have no doubt whatsoever about Montreal.

Senator McElman: I am referring to strictly English language commercials.

Mr. Juneau: I am sure that some very good English language commercials are produced in Montreal now. It is probable, if many companies undertook to produce all of their English language commercials in Montreal, they would have to bring in technicians, directors, producers or performers from Toronto. However, since many of them are importing those people from New York, I do not see that that would present too great a problem.

Senator McElman: Currently, would it be fair to say that the bulk of English language national advertising accounts are produced in Toronto?

Mr. Juneau: It is only a guess on my part, because I have not checked it, but I would think that you are right. The bulk, I think, would be produced in Toronto. There are so many more facilities and people in Toronto.

Senator McElman: Perhaps I could direct this question to Mr. Hart. As a ball-park figure, would it be something of the order of 75 per cent or 80 per cent?

Mr. Ralph Hart, Manager of Radio-Television Development, Planning and Development Branch, CRTC: I am not sure.

Mr. Juneau: You are referring to Toronto-produced as against other parts of the country?

Senator McElman: Of the total amount of national advertising now produced in Canada, what percentage, in ball-park figures, would be produced in Toronto?

Mr. Hart: It might be as high as 75 per cent, Senator McElman. I could not be sure. That would be one of the pieces of information which I would hope the survey to which Mr. Juneau referred in his opening statement would develop. Certainly, by far the largest proportion of English language commercials are produced in Toronto as compared to other centres.

Senator McElman: The greatest proportion is produced in Toronto?

Senator Graham: If I may just comment, Senator McElman, one of the witnesses gave us a very definite figure of 80 per cent being produced in Toronto.

Senator McElman: I missed that.

Mr. Juneau: I would not dispute that figure.

Senator McElman: What I am coming to is that, like many Canadians, I am concerned with the effect of the US produced commercials on the Canadian lifestyle, particularly on the youth of our country. I might say, I would also be somewhat concerned, if we do repatriate this rather substantial amount of production to Canada, that it may all be going to Toronto, and we would be subjecting the nation to the Toronto subculture which, perhaps, might not be too much more Canadian than what we are getting now.

Senator van Roggen: It is worse in Vancouver.

Senator McElman: What I am getting to is whether or not, if we are able to do this, there is a possibility of getting the production out into the country more and reflecting more the Canadian lifestyle rather than the Toronto lifestyle, that we get so continuously through CBC.

Mr. Juneau: That is a broad subject. As in many other things, at least when you repatriate within Canada an activity of that kind, your chance of having some influence is somewhat greater than when the activity takes place outside the country. The CRTC has no authority on Madison Avenue. It is a little easier, because of legislation and other factors, to have influence on what takes place within the borders of Canada. The problem you indicate is one that we constantly refer to in the CRTC. However, I think that no country in the world is without a problem of that kind when it comes to the media. I am sure that in England people complain about the influence of London, that in France they complain about the influence of Paris, and so on and so forth.

I do not know whether the problem is greater in Canada. It is certainly very difficult in Canada because of distances. Mind you, I think that if we were determined to solve that problem we could do so. I am referring to the general problem. We find it extremely difficult to develop interest, even within the government and within the CBC, for accelerated development of services in places distant from the centres. People are just not terribly excited about doing things in Newfoundland, in Northern Manitoba, or on the north shore of the St. Lawrence. For metropolitan people they are not exciting places to bother about.

Senator McElman: This is exactly why I posed the question. What I am asking you is if in solving one problem we are not simply accelerating another problem.

Mr. Juneau: I think it would be a sad situation in the country if we refrained from doing certain things in Canada because it would give too much importance to Toronto. I think a rather schizophrenic situation would develop. Iy you wont to build a country you certainly have to be worried about the problems of decentralization, but I do not think we will reinforce Canada by destroying Toronto. I say that as a Montrealer.

Senator McElman: Do not misunderstand me, Mr. Juneau. I do not need to make any apologies for my Canadianism, which is not anti-Americanism, but it is very much pro-Canadianism.

Mr. Juneau: I know that. I am reacting candidly. The same problem exists in many respects, but it seems to me the solution is not to slow down any Canadianization process because of the danger of excessive developments in Toronto. I would think we should rather have a more determined attitude concerning the development of other parts of the country. You are probably aware that the Commission never misses an occasion to reflect this preoccupation.

Senator McElman: Yes, and my interest, of course, is not to forestall the repatriation but to foresee.

Mr. Juneau: To be frank with you, I would think that in radio the production of commercials is much more decentralized than in television; many, many radio stations produce their own commercials. Mind you, many television stations produce their local commercials; all local television commercials are produced locally.

Senator McElman: This is why I refer particularly to national accounts.

Mr. Juneau: To be frank with you, I think this would probably be a tougher problem than many others that members of the Senate and the CRTC may be concerned about. I believe it is tougher than the problem of programming, because it does require very, very specialized skills. I would not underestimate the difficulty of achieving a great deal of decentralization in the production of commercials for national accounts.

Senator van Roggen: Mr. Chairman, I apologize for leaving, but I have to catch a plane. I have asked Senator Laird if he would pursue the matter that I have been concerned with in the last one or two days, namely the suggestion of absolutism, which is in the wording of the resolution, and in one or two of the briefs, that it should be 100 per cent, pulling down the iron curtain, as far as commercials in Canada are concerned, as opposed simply to a higher percentage than we have now. I am sorry I shall not be able to stay to hear Mr. Juneau's observations on that, but Senator Laird will pursue it for me.

Senator Laird: I will pursue it. I naturally noted with interest, Mr. Juneau, that you were definite on two scores, which we have discussed pretty thoroughly over the past three days. One was that you thought this matter should be dealt with by regulation and not by guidelines any more. The second point was the very one Senator van Roggen mentioned, that you felt that radio commercials should be 100 per cent Canadian produced. In view of the fact that you mention this in your brief, would it be fair to say that you would not take these drastic steps without your usual practice of holding public hearings, and giving an opportunity to all interested parties to make representations?

Mr. Juneau: That is right, senator.

Senator Laird: In other words, you have expressed what you feel should be done, but I take it you would be amenable to reason if you found it in representations?

Mr. Juneau: It is a very complex subject. I am sure that even to develop a proposed regulation we would need to have considerable consultations with the experts in the field.

Senator Laird: It has also come out in the evidence to which we have been listening intently over the past three days that conditions can vary; there might have to be a variation in the enforcement of your regulations in some respects, to make them conform to different situations from the regular, normal situation. Is that a fair comment?

Mr. Juneau: That is absolutely right, yes. We are aware that certain commercials require different locales, and sometimes they would have to be outside the country. I used as an example the fact that sometimes you want snow and there is none in Canada—and somebody asked me when there was no snow in Canada!

Senator Prowse: Somebody said grass.

Senator Laird: During the past three days it has become fairly evident that the witnesses and, I take it, most members of the committee are agreed on two things. First, we would all like to see an increase in Canadian-produced commercials. We honestly would. Secondly, it cannot ever be 100 per cent. In other words, there has to be some importation. Two figures were suggested to us by two different groups as desirable goals. One figure was 75 per cent produced in Canada and the other was 80 per cent produced in Canada. These were given to us as being realistic. I would be very appreciative of your comments on that.

Mr. Juneau: I think that the figures I used in my remarks are themselves of debatable value, because they are based on the number of commercials that seem to be produced in Canada. There are other factors that are important, the amount of money represented by those commercials.

If all the big commercials were produced outside the country, it may be that the dollar value would be much under 75 per cent or much under the figures I give here. So I feel we should be careful, if we use a percentage which refers to the number of commercials, and we should have more information or we should have other criteria. That is why the approach should be to have as close to 100 per cent as possible, with the possibility of exceptions when common sense requires making a commercial outside the country. That is why such a regulation is difficult to draft, to leave some leeway but at the same time not make it too arbitrary.

Senator Laird: You relieve my mind very much, so I am going to leave you alone.

Senator Carter: Mr. Juneau, in your brief you refer to a survey that has been carried out. Was that a survey of Canadian produced commercials, or a survey of all commercials shown in Canada?

Mr. Juneau: Because of the lack of adequate information that I was referring to in answer to Senator Laird, we have been trying to carry out a survey, with the co-operation of the Association of Canadian Advertisers, over the last two years. The purpose of that survey is precisely to obtain more information concerning the dollar value of commercials, which commercials are produced in Canada generally and which are not produced in Canada, and so on and so forth.

Senator Carter: It was a general survey?

Mr. Juneau: Yes, a general survey of all commercials.

Senator Carter: Have you also conducted an analysis of this survey?

Mr. Juneau: We have not carried out the survey yet. What we have been working on is the method of the survey, the factors we want to find out about, the kind of details we want, and so on and so forth. It has been very difficult to develop that. It is also difficult in the sense that you want the co-operation of the people who sponsor those commercials and those people do not come under the authority of the CRTC, so you can get the information from them only if they want to give it to you.

Senator Carter: You indicated in your brief that you think the time has come when there should be some form of regulation, and in the last paragraph you quote the kind of commercials you would like to have shown in Canada. You refer to this, and what impressed me very much is that you refer to values. You say that commercials can have an impact the same as programs, and then you go on to say that it is important that these values grow out of our Canadian society and not out of another, perhaps inappropriate milieu, with different institutions and public goals.

The reason I asked if you conducted any survey is because I was wondering whether in carrying out your survey you intend to get some sort of analysis of what types of values are in the films that you are surveying and how they measure up to what you think they ought to be.

Mr. Juneau: Frankly, no, we did not intend to get into that sort of thing. We were going to obtain statistical and financial information concerning the dollar value of these commercials. In referring to these ideas at the end of my remarks, in a case like that it is like programming in general, the Commission would hope that if the commercials are produced in Canada by Canadians they will tend to reflect more Canadian values, just because they are produced by Canadians; but we would have to hope that this would happen rather than intend to direct it by CRTC policy.

Senator Carter: Yes. I was not thinking so much of laying down absolute instructions as to the type, but you do admit in your brief that we now have in Canada the productive capacity to make our own Canadian commercials.

Mr. Juneau: Yes.

Senator Carter: Would it not be worthwhile to give them some idea of what you think the commercials should be like, even if it is only in the form of guidelines? It would give them some goals, even if you mentioned only the goals you think should be achieved by these commercials and the kind of impact they could and should have on society?

Mr. Juneau: We very often have occasion to discuss these matters with people in various bodies, like the advertisers, the advertising agencies, the broadcasters the producers of various kinds. We do not mind engaging in discussions about these matters, or discussions of a consultative nature. I think we would hesitate to establish anything that would look official—policies or guidelines—except in very definite fields. As you know, the question of children's advertising has been very much discussed lately. That is a specific field where we may very well have guidelines.

Senator Carter: Mr. Juneau, surely there are only two reasons why you should have 100 per cent Canadian content? One is the dollar value of it for Canadians, and the other is the value for our society. These are your two goals?

Mr. Juneau: That is right.

Senator Carter: While you want to get as much financial benefit to the Canadian industry and perform-

ers and actors out of it, surely the other goal is important as well, that there should be some action taken? I am not saying that you should go to the extent of censorship or anything like that, but something should be laid down as a sort of general guideline as to what these commercials should try to achieve?

Mr. Juneau: There are certain very broad guidelines, senator, already in the Broadcasting Act, in very broad terms, of course. I think the Commission would be very careful not to go beyond the values or the goals established in the Broadcasting Act because of the obvious risk there is for an agency in doing that sort of thing.

Senator Carter: Perhaps I should have worded the question a little differently. First of all, the whole purpose of the act is to give the guidelines and tell what kind of broadcasting we want. That is your organization, to show where some of these commercials that are shown now do not measure up to the standard we set out in the act, and by illustration indicate the kind of goals that Canadian commercials should achieve.

Mr. Juneau: Yes. I hope you will allow me to express myself very carefully on this. I know what you mean. I think it is a matter for the Commission to play its role and help broadcasting understand well the goals established in the act. That is one side of the problem, the positive side. On the other hand, you refer yourself to the negative side of the problem, which we have to keep in mind; that is, the concern that people have that an agency established by the government will intervene unduly in the creative process. There is a common sense position between these two factors.

It is possible, senator. As I said earlier, we very often meet with broadcasters privately and publicly. Some of us, the Vice-Chairman and myself particularly, make a number of public speeches in those more informal relations with the industry. We very often express pretty specific views. Either we disagree with certain things or we make suggestions.

Senator Carter: But always within the framework of the goal set forth in the act?

Mr. Juneau: Yes.

Senator Graham: Since you perhaps might be considered as the Czar of Canadian radio and television, would you be concerned, by regulation, with the possible loss of revenue to other media?

Mr. Juneau: Well, a possible loss of revenue to television stations. To other media? I suppose indirectly there is a vague possibility of a loss. For example, say television commercials cost more to produce than the $30 to import them, and the same advertisers want to maintain their time buying budgets on television; they might have to reduce their purchase of space in other media. There is that indirect possibility. Is that what you meant?

Senator Graham: Yes. Would you be concerned with any possible reciprocal action from the U.S. companies?

Mr. Juneau: Not really. In what sense? In the sense that they would stop doing in Canada certain things they are doing now?

Senator Graham: Yes.

Mr. Juneau: I don't think so, really.

Senator Graham: Or that they would stop buying Canadian-made commercials in the U.S.

Mr. Juneau: I think that when the U.S. companies are producing programs in Canada, which they do occasionally, or when they are producing commercials in Canada, they are doing it for business reasons. When they are not producing commercials in Canada for Canada, when they are producing Canadian commercials in the U.S., they are doing it for business reasons, too.

Senator Graham: Do you have any time frame in mind in respect to regulations?

Mr. Juneau: We do not have a schedule in mind. As I said in my remarks, from the time we heard that the Senate was going to pay some attention to this matter, that definitely entered into our calendar as an important element. But I would say that after the Senate has made its conclusions public, if it is soon, we would have to take some action in the fall; but, you know, there are many things on our calendar and exactly when I could not tell you.

Senator Laird: But not until after the hearings?

Mr. Juneau: Not until after the hearings on our part? Oh, certainly not. We could not do that anyway, senator, because the law makes a hearing obligatory in the case of a regulation, and you could not do this without a regulation.

Senator Graham: But you are satisfied that it would be much simpler to regulate in radio and in a much shorter time, than it would be in television.

Mr. Juneau: Well, in radio there does not seem to be a great problem. Almost all of the commercials seemed to be produced in Canada in the case of radio. There may be some jingles and things like that that are produced in Hollywood, Los Angeles or New York.

Senator Graham: Maybe I should point out what one of the previous witnesses said in terms of the affiliates of the CBC. Some of the western affiliates had expressed some concern and they brought out the point that 40 per cent of their local advertising content involved imported jingles and I.D.'s from the U.S. As I understood it, it was 40 per cent of their total advertising revenue.

Mr. Juneau: Well, that surprises me. That seems pretty high.

Senator Graham: I thought it was rather high myself.

The Deputy Chairman: He also added that it was not only with respect to the western stations. It was over nearly all of Canada.

Senator Prowse: That was 40 per cent of their local stuff.

Senator Graham: That is right. I thought I said "local".

Senator Prowse: He said two forties in there. One was the local amount and it was 40 per cent of that local business; and then for 40 per cent of that local business,

if I understood it correctly, they would import the commercial complete and then tack on, "Get such-and-such," whatever it was that was being advertised at Joe's on Fifth Street or whatever.

Mr. Hart: Many retail merchants who use radio use advertising material provided by the manufacturer of whatever product is being featured. But the big difference between radio commercials and the question of producing in Canada, as opposed to importing from the United States, in radio as compared to television—

Senator Prowse: No, no. This was TV we were talking about.

Mr. Hart: Oh, this was television. Sorry.

Mr. Juneau: Forty per cent would seem to be a bit high in the case of radio, senator.

Senator Prowse: That was their figure.

Mr. Juneau: In the case of television, though, you said.

Senator Prowes: In the case of television. He was talking about television, am I correct?

Senator Graham: I am not sure that he was talking about television. I don't think he differentiated.

Senator Laird: Mr. Sinclair just made the flat statement.

Mr. Juneau: Mr. Sinclair of the CBC?

Senator Laird: Yes.

Mr. Juneau: Well, we can check on that, but 40 per cent importation of commercials on radio seems very high.

Senator Prowse: I am sure that what he was talking about was that when these people would import a product, the commercial would be available when they got the dealership for the product. The commercial would then go on TV and underneath it would be the name of the dealer with words something like, "If you want one of these, come to Joe's."

Mr. Juneau: Yes, you have all of those gadgets that you can buy for $2.95 or $3.50 at Woolworth's and so on. You can see for yourself that they are all made up in advance and then they tack on, at the end, the address of the local stores.

Senator Prowse: Yes.

Mr. Juneau: There is a lot of that done with records. There is a lot of that on local television.

Senator Graham: You say, Mr. Juneau, in conclusion, that:

> the CRTC is convinced the necessary competence exists in Canada and that substantially improved performance can now be required of advertisers in this country.

Is the CRTC doing anything to encourage the various agencies involved, to improve and to expand the talent pool in Canada?

Mr. Juneau: Well, we are certainly talking our head off about that. Certainly, the most important way to increase the talent pool is to create a demand, and I think the CRTC has contributed to creating a demand by establishing the Canadian content rule, which, in television, is 60 per cent for the whole schedule and 50 per cent for any particular part of the schedule.

There are many other things that we have done to make sure that the economic base of the television stations in Canada is not disrupted so that television stations continue to maintain a competitive position with her American counerparts which enable them to produce in Canada.

We have recommended in the field of cable various things so that cable will not disrupt the economic base of television, like deleting commercials and so on and so forth. We have recommended that another way of preserving the economic base of television is by changing the Income Tax Act. We have recommended that the Canadian Film Development Corporation should have its terms of reference changed so that it can finance the production of television programs, and not only in feature films. Is this the sort of thing that you mean or am I completely off the beam?

Senator Graham: No, I think you are doing an excellent job in that regard.

Mr. Juneau: We have recommended 30 per cent Canadian records on radio.

Now, senator, there is a much broader matter which we have talked about, and I admit that this is more than just talk and discussion; it is studies. We are trying to study how, from a long-term perspective—and I don't mean 25 years, but I mean five years, ten years or 15 years—we could develop a very strong production industry in Canada. Because the concern of the Commission is that we are going through a fantastic phase of expansion in our distribution system, and if you expand your distribution system and you do not increase your production, there is only one thing you can do to fill your system, and that is to import more stuff. So whatever proportion of Canadian production we now have is going to continue to decrease in proportion to what we import, and finally we are going to have a very small proportion of Canadian material as the importation of foreign material increases.

Apart from cable, which is well-known and is increasing very much, and is increasing the importation of foreign material, you read about developements like the possibility of the U.S. broadcasting satellite, with a multiplicity of channels, which could easily be picked up without too great expenditure by Canadian cable systems and which would increase even further the number of channels coming into Canada. You hear about companies like Teleprompter, backed by Hughes Aircraft, which would rent up to seven or eight channels on a satellite of that kind, and which would feed those channels with all kinds of material. I would point out that in their publicity material Teleprompter referred to Canada as if it were Texas—it is just part of the market they have, and they refer to the fact that they have or could have outlets in Canada.

In the next 15 years I think we will inevitably witness a considerable increase in the availability of foreign

material. If we continue to increase only our capacity to receive and distribute without increasing our capacity to produce, we will be much more in a minority position, so to speak, than we are now. I think it is a very wise thing for all public authorities—the CRTC within its power and jurisdiction, and other more important authorities—to look at ihis long-range prospect and see where we will be 15 years from now. Fifteen years is very close.

In referring to production it gives the impression of being a big industry, but it is also a matter of everybody being able to express himself. The problem of expression, creation and production, and the creation of a much bigger production industry in the mental field, so to speak, is somethnig that should retain the attention of the authorities. We are certainly working on it in the field of broadcasting. It involves also the field of textbooks for schools, although that is not a responsibility of the federal authorities. But we have the same problem there. The percentage of Canadian material in textbooks in schools is very, very low.

[*Translation*]

Senator Langlois: Mr. Juneau, further to the answer you have given earlier to Senator Graham concerning the possible consequences of regulations, which could force American manufacturers to buy more expensive Canadian advertising, is there not a danger that this could provoke on their part a greater use, not only of U.S. border stations to reach the Canadian market, or the satellites which you have just mentioned?

Mr. Juneau: I think, Mr. Senator, that if this problem of American stations intervention in Canada either through the RCN airwaves, either through cables, it is a problem that must be settled in any case because, at the moment, it is a very grave problem, because, as I have had occasion to say elsewhere, the purchase of advertising on bordering American stations at the moment represents at least $15 million per annum. This is Buffalo, in Pembina or in Vancouver. This already represents $15 million per year in direct purchases from these stations. In addition, we feel that the value in dollars of the advertising on American channels, which comes through cable and reaches Canada is worth approximately $45 million. We must be precise—we do not pretend that this publicity is really paid, that it is bought to reach Canada, but finally if you look at the number of Canadian televiewers reached by this publicity, and if you make the necessary multiplications, very well known by people in the industry, you arrive at a value of $45 million per year. What we fear, and all our studies confirm this fear, is that at a given moment this market will represent, for American advertisers, a market that will be so important that they will begin to account for it in their estimates. We know that already some of them take it into account. Therefore, independently of what we discuss with you today, it is a question that must be solved and this through various means such as the change in the Income Tax Act, the Cablevision Policy, which we are pursuing, etc.

Senator Langlois: Thank you.

The Vice-President: Mr. Juneau, you mention on page 4 of your brief, in speaking of commercials produced in Canada

> but by the advertisers' own estimates progress has been too slow

when you mention the word "advertisers" (in English), you are referring to clients, I suppose?

Mr. Juneau: We mean certain advertisers, certain clients, yes, who admit that progress has not been very rapid.

The Vice President: Are they American or Canadian clients?

Mr. Juneau: There are American companies which presently produce all their commercials in Canada. There are others which produce all their commercials in the United States. Therefore, those who produce all their commercials in Canada, because they think it's a good way of doing business in Canada, and that is a question of citizenship, as can be said, corporative citizenship, as it is said in English—are at a disadvantage vis-à-vis those who produce all their commercials in the United States.

The Vice President: If I understand your brief correctly, it also seems to mee that your Commission is not satisfied with the progress made in the percentage of commercials produced in Canada. Is that correct?

Mr. Juneau: Yes. That is true, yes, because it has increased in a very negligible way. One percent per year is mentioned approximately, since the problem has been raised.

The Vice President: What woud be, according to you, the percentage of increase that we could reach without causing any harm to industries, whether they be from the United States or from American subsidiaries?

Mr. Juneau: It is difficult, as I said earlier in a reply to Senator Laird, to affix a percentage. It seems to me that it should be as close as possible to 100 percent, but a certain leeway should be allowed in order to, as good sense indicates, be able to produce the film outside the country. For example, if advertising for the Caribbean is made, it is difficult to make it in Alaska or in the Yukon; things of this type, or there can even be cases, I suppose, where for technical reasons it is absolutely impossible to produce a commercial in Canada, however, to me this seems more doubtful. But there are certainly questions of landscape for example.

The Vice President: There has been a great deal of talk, during the discussions over the last three days, on the subject of the percentage which we could reach without endangering the economy in general, therefore it is a point on which, I think, the members of the Committee are interested because some of them say, as Senator Laird said a few minutes ago, we could reach 75 percent, others 80 percent?

Mr. Juneau: I think we can give ourselves as an objective approximately the totality of commercials and from there...

The Vice President: Spread it over a certain number of years?

Mr. Juneau: Maybe spread it over a certain number of years. Then, as I have said earlier, we must not

forget that an objective such as this expressed by the authorities, if it was the CRTC which took these measures, once the objective is established, there is then prolonged discussions, and very, very precise, which are held with the industry among others, private meetings, but also meetings through the medium of public audiences etc. which allow for discussion. Studies are then made everywhere. There are also those who differ opinions with us. All this then allows us to arrive at a reasonable solution.

The Vice President: Thank you Mr. Juneau.

Senator Lapointe: Are there any laws in Europe, or for example in Mexico, which control the intrusion, one might say, of commercials coming from other countries such as France for example?

Mr. Juneau: I do not know, Senator Lapointe. I know obviously that in other fields, in the field of television, in the field of cinema, there are obviously laws that are far stricter than ours in these sectors. In the field of advertising, I do not know.

[*Text*]

Do you have any information concerning the importation of commercials, Mr. Hart? What about the Independent TV authority in Britain, for instance?

Mr. Hart: I do not believe there is any law in Great Britain. It happens that Australia has a limit on the amount of imported commercial material that can be used.

Senator Prowse: It is a complete ban, we were informed.

Senator Lapointe: Do you do anything with respect to France or Mexico, for instance?

[*Translation*]

Mr. Juneau: Well, you see, in France, Senator Lapointe, there is no advertising—they are beginning now to have institutional advertising, that is advertising for a brand, for example. It is possible to advertise wool in general for the wool industry. It is possible to have advertising for, I don't know, the transport industry, or milk industry. It is probable that, in all these cases, advertising finally is difficult to import. As a result, I would be led to believe, I, without much risk of making a mistake, that in France almost all the televised advertising is national, that is, that it is not imported.

Senator Lapointe: You also mentioned...

Mr. Juneau: If I can be allowed, Senator, there is also another problem which completely changes the situation in these countries, it is that it is not mandatory to proceed by legislation or by regulation, because there is the state monopoly on broadcasting. Therefore, I, I have already been in a position that I have tried to sell Canadian films in France and there was no law which forbade the ORTF from buying Canadian films. It was absolutely open. There is no legislation for that. But, in fact, they were buying very little.

Senator Lapointe: But Radio-Luxembourg, for example, is that also nationalised?

Mr. Juneau: Radio-Luxembourg, it is private. But, it is radio, however.

Senator Lapointe: You said, earlier that there are obviously many Canadians who look at American television. Therefore, is it not a bit illusive to think that we can protect the Canadians against the American culture by having commercials entirely Canadian?

Mr. Juneau: No, I think that in all these questions this is much like many other points of view on the problem that you have raised. There is no question whatsoever of protecting Canadians from foreign culture. The question is to prevent that the economic base of the Canadian culture be destroyed. It is not at all a problem of controlling ideas. I think that, neither the CRTC, nor the Canadians who share, nor Parliament when it voted the Broadcasting Act, were thinking of stopping the dissemination of ideas. The question is to prevent a Canadian institution from being destroyed in order that there be a dissemination of ideas which come from Canada from time to time.

Senator Lapointe: Earlier when Mr. Graham asked a question, I think it was the opposite that he meant, that he wanted to ask. He wanted to ask that if, let us suppose that American companies were forced to spend more to make their commercials in Canada, he was asking if they would not be more inclined to give their commercials to newspapers, which would cost less?

Mr. Juneau: Yes, it is that. I answered that this problem is real, at least in theory; that, if a given company is forced to pay more to produce commercials in Canada rather than import them, if it is forced to pay $30,000 to make a commercial rather than pay $30 to import it, and that the same company maintains the same time on the television networks, this will, obviously, represent an increase in the television budget. It is possible that they reduce proportionately their purchases of advertising elsewhere. It is possible. However, we are in very indirect equilibrium, and it is difficult. I would like, however, to ask Mr. Hart since I have already said the same thing twice, I would like to check if...

Senator Lapointe: Yes, but, would the opposite not occur? Would televised commercials be reduced so that newspapers be given more?

Mr. Juneau: Perhaps not give more to newspapers. Yes, two things could happen. That is, time purchase could be reduced...

Senator Lapointe: Yes.

Mr. Juneau:...to put money into the production of commercials. The following phenomenon could also happen: a company that does not have a big budget, for there are companies who have large budgets, obvously, but it must be said that the great majority of national advertising comes from companies that have big budgets, but it remains, in any case, that there is a certain number of companies which advertise on television which have small budgets. It could then happen that this company, facing the necessity to produce commercials in Canada, decides that the whole of the television sector costs too much and that it withdraws completely from television to choose another medium, such as newspapers or magazines, or billboard advertising, or radio, because radio is also a competitor to television. Now, I make indirect allusion to this problem in my remarks, when I say that

it is questioned, that it is a project which we would not have pursued three years ago, because we were asking other efforts from the television industry, such as an increase in its production of Canadian programmes, at a time also, where there was a certain recession in the television industry. We are, three years later, in a position where television stations have succeeded in observing a demand for greater production, and we are also at a time where we are far from a recession, there is an excellent economic situation in the radio and television fields.

[*Text*]

The senator was inquiring as to the danger of transfers of revenues to other media.

Mr. Hart: I believe you did answer it quite completely. There is and would continue to be the risk in the case of products with small budgets.

[*Translation*]

Senator Langlois: Mr. Juneau, our discussions this afternoon seem to have been limited to the competition that reaches us from the United States, rather than to the Canadian production, but representations have also been made to date on the subject of competition which comes from Francophone countries; what is your opinion? What comments do you have to make on this subject? We are told that there are productions which come to us from Francophone countries and which enter the Canadian market at prices really reduced compared to Canadian production?

Mr. Juneau: Commercials?

Senator Langlois: Commercials, also films, but it is mainly dubbing, I believe?

Mr. Juneau: Yes, dubbing, maybe yes. Probably there is dubbing of American, or Anglo-Canadian commercials which are made in Europe. But I think that the dubbing industry in Montreal and in Toronto, as far as English is concerned, is becoming very competitive. There is even, to my knowledge, I do not know where it is at, but, it was said six months ago, one year, that very important French concerns intended to establish themselves in Montreal to undertake post-synchronization, or dubbing in Montreal, rather than do it in Paris. But I could not give you figures on the importance of this competition at the present time.

I do not know personally, even as a spectator, many commercials on television which do not look imported.

Senator Langlois: We were given the example of a commercial on stoves, which had been a failure, because...

Mr. Juneau: Well, there is also the psychological distance, I think, in advertising which is still great. But, I think you are right that in the future this psychological distance and in the rather near future, as far as I am concerned, this psychological distance will become shorter and shorter, and the danger of competition will become far more real.

[*Text*]

Senator Carter: I should like to ask one brief question. Coming back to my earlier line of questioning about the emphasis on Canadian identity, Canadian values, are there available anywhere in Canada, in either the French or English language, such things as an award or prize for the best Canadian-produced commercial or Canadian program that best portrays Canadian values or the Canadian identity?

Mr. Juneau: There are awards like that given every year by the industry itself, both for radio and television. I do not know that they have an award for that particular factor.

Senator Carter: That is what I am interested in.

Mr. Hart: The awards are for excellence of production.

Senator Carter: That is a different thing.

Mr. Hart: There has been no introduction in the award system for Canadian values, that I can recall.

Mr. Juneau: If there were, I think there are commercials now that would rate very well.

Senator Carter: Do you think that is something worth considering?

Mr. Juneau: I think it is a good idea. We might very well transmit the suggestion to the people in the industry, if they have not heard it already.

Senator Lapointe: I have been a member of the jury for these awards, and we considered the quality of the Canadian style and character of the commercials. When we judge the commercials, we consider the particular quality of the Canadian identity, the Canadian style.

Senator Carter: It is funny that we do not hear more about it. Perhaps the prize is not big enough.

Mr. Juneau: Maybe there should be a prize from the Senate! But it is a good idea. I am sure it should be discussed.

Le vice-président: Est-ce qu'il y a d'autres questions? If not I will again thank...

[*Translation*]

Mr. Juneau, as well as to his colleagues, to have kindly accepted our invitation, and especially for having supplied all this important information.

[*Text*]

After three days of hearings, we have had so many views expressed, and opposite views, that your presence here this afternoon has helped us very much. Again, we thank you most sincerely.

Mr. Juneau: Thank you, senator. Thank you, gentlemen.

The Deputy Chairman: I should remind honourable senators that we will have a meeting on Tuesday evening around 9.15 in order to work on our report.

The committee adjourned.

APPENDIX "A"

June 28th, 1973

The Honourable Maurice Bourget
Deputy Chairman
The Senate
Ottawa, Ontario

Dear Senator Bourget:

The Institute of Canadian Advertising, the trade association for advertising agencies operating in Canada, acknowledges receipt of your invitation to appear before the Standing Senate Committee on Transport and Communications on Wednesday, July 11th at 4:00 p.m. in Ottawa.

Yesterday our Executive Committee met and came to the conclusion that it would be inappropriate for our Association to appear before your Committee. The reason for this is that while each of our member agencies may have individual views with respect to the locale of the production of broadcast commercials, it is impossible to develop an Association point of view.

The subject you are dealing with is an extremely complex one which has many implications. Undoubtedly your Committee will be appraising many factors that bear on this important matter.

May we extend to you and the Committee our best wishes for a fruitful enquiry.

Yours respectfully,

INSTITUTE OF CANADIAN ADVERTISING

James M. Reeve,
President.

APPENDIX "B"

THE CANADIAN ASSOCIATION OF BROADCASTERS
OTTAWA, ONTARIO

July 9, 1973.

Senator the Hon. J. C. Haig,
Chairman
Transport and Communications Committee
The Senate
Ottawa, Canada.

Dear Mr. Chairman:

We appreciate your thoughtful invitation of our comments on the matter now under consideration by your Committee; that of radio and television commercial advertising in Canada.

The Canadian Association of Broadcasters, l'Association canadienne des radiodiffuseurs, remains fully committed to attainment of the objectives set forward in Section 3 of the Broadcasting Act 1967-68 c.25, s.1 (Chapter B-11).

As a matter of deliberate and consistent policy, our Association's members deploy their resources so as to make maximum possible use of Canadian creative and performing talent. A special committee of this Association has under active review all practical means by which a Canadian production industry can be further stimulated and expanded.

It should be borne in mind that all this is being done in an area of competition that is somewhat unique in Canada. This consists of importation into Canada by organizations other than broadcasters of foreign produced material in the English language. The rapid technological changes in our industry has brought about a situation where foreign productions are being imported more and more in our country via Cable, Video Casette, Pay T.V. etc.

Relative to commercials, the broadcaster operates in two separate categories. Insofar as local advertising is concerned, the broadcaster is both producer and user. Nearly 100% of local commercials, and these constitute about half of all commercials used, are now produced in Canada.

"National" commercials are ordinarily produced by organizations other than broadcasters, but used by them. A preponderance of these is now produced in Canada and our information is to the effect that the percentage is increasing.

A front page article in the June 18, 1973 edition of the magazine known as "Marketing" informs us that:

> "The percentage of English-language television commercials made in Canada by the top 25 advertising agencies is increasing, according to a survey by the joint broadcasting committee of the Institute of Canadian Advertising and the Association of Canadian Advertisers.
>
> The survey shows the percentage figures of commercials produced in Canada were: 61 in 1968; 64.6 in 1969; 59.5 in 1970; 65 in 1971; and 67.8 in 1972.
>
> The percentage figures for commercials produced outside Canada for Canadian use were; 3 in 1968; 6 in 1969; 5.1 in 1970; 6.9 in 1971 and 4.5 in 1972.
>
> PRINTS
>
> The percentage figures for commercials produced outside Canada (primarily for use outside Canada but prints of which were imported for use in Canada and where no adaptation was made for Canadian use) were: 7.9 in 1969; 6.3 in 1970; 6.2 in 1971; and 5.4 in 1972.
>
> For commercials produced outside Canada (primarily for use outside Canada but where components were imported and prints produced in Canada and where no adaptation was made for Canadian use): 12.6 in 1969; 11.5 in 1970; 7.8 in 1971; 10.7 in 1972.
>
> For commercials produced outside Canada (primarily for use outside Canada but where components were imported and adapted in Canada for Canadian use): 11.1 in 1968; 7.6 in 1969; 16 in 1970; 12.5 in 1971; and 10.6 in 1972.
>
> OUTSIDE
>
> For commercials produced outside Canada (primarily for use outside Canada but where adaptations for Canadian use were made outside Canada); 1.9 in 1968; 1.3 in 1969; 1.6 in 1970; 1.6 in 1971; and 1 in 1972.
>
> The base (number of commercials) for the study was: 775 in 1968, 1115 in 1969, 751 in 1970, 824 in 1971, and 772 in 1972.

Given all these circumstances, we question the advisability of legislation directed at an objective to which most elements concerned seem to be dedicated and which is rapidly being achieved.

It may also be that many U.S. Advertisers who cannot allocate large budgets to Canadian media purchases could be discouraged from advertising on Canadian stations if it is mandatory for them to have separate commercials produced for Canada. This could have the effects of diverting their budgets for Canada to U.S. border stations in order to reach their Canadian customers.

There is, however, one matter you and your colleagues may wish to consider. Canadian creative and performing talent will benefit considerably if the productions in which they are involved can be sold beyond our borders. To some extent, Canadian material, including commercials, is now being sold in the United States and elsewhere. Intensive efforts are being made to increase these sales. There is the possibility that legislation in Canada might invite retaliatory legislation from other countries, especially from the United States, and thus add additional competitive handicaps to further development of a Canadian production industry; the health of which can be materially stimulated by international sales.

In concluding, we would like to reiterate the fact that our Association is very much dedicated to deploy its efforts to maximize the use of Canadian creative and performing talent. We do not seek an appearance before your Committee and hope these brief comments may be of some value to you. The time available to us made it difficult to prepare a more detailed submission. However, we should be pleased to contemplate a report in much greater depth at some future date should you and your colleagues feel this would be useful in your assessment.

Respectfully submitted,

Philippe de Gaspé Beaubien,
Chairman.

APPENDIX "C"

CANADIAN BROADCASTING CORPORATION

Vice-President, Corporate Affairs
and Assistant to the President

Ottawa, Ontario.
July 25th, 1973.

The Honourable Maurice Bourget,
Vice-Chairman,
Standing Senate Committee on
Transport and Communications,
The Senate,
Ottawa, Ontario.

Dear Senator Bourget:

In accordance with the Committee's request for information on the number of foreign-produced TV series dubbed into French at Montreal, I enclose a listing which I trust will be self-explanatory.

It should be noted that of the 23 foreign series dubbed in the summer of 1972, 14 were dubbed in Montreal and eight of the nine dubbed elsewhere were programs actually obtained earlier. Nevertheless, they are listed because the CBC had rights to re-run them. Similarly, of the 31 foreign series dubbed in the fall-winter 1972-73 period, 21 were dubbed in Montreal and six of the 10 dubbed elsewhere were programs obtained earlier with rights to re-run them. All the programs were 30, 60 or 90 minutes in duration and we have indicated the number of dubbings for each program when more than one occasion was involved.

I hope this is sufficient for your purposes.

Yours sincerely,
R. C. Fraser.

A) SUMMER 1972

A) DUBBED IN MONTREAL

Mon Ami Ben	30′
Minifée	2 x 30′
Robin fusée	30′
Le monde en liberté	30′
Le Gourmet Farfelu	5 x 30′
Au Pays de l'Arc-en-ciel	30′
Le Roi Léo	30′
Prince Saphyr	30′
Daniel Boone	60′
Au pays des géants	60′
Tarzan	60′
Les Pierrafeu	30′
Vers l'an 2000	30′
Marcus Welby	60′

B) DUBBED OUTSIDE CANADA

Roquet belles oreilles	30′
Rinaldo Rinaldini	30′
Fifi Brin d'Acier	30′
Cadets de la Forêt	30′
Daktari	60′
Disney	60′
Les Règles du Jeu	90′
Sorcière bien-aimée	30′
La Dynastie des Forsyte	60′

B) FALL-WINTER 1972-73

A) DUBBED IN MONTREAL

Le Gourmet Farfelu	250 x 30′
Les aventures du Seaspray	26 x 30′
Que sera sera	39 x 30′
Au pays de l'Arc-en-ciel	13 x 30′
Skippy le Kangourou	39 x 30′
Madame et son fantôme	39 x 30′
Minus 5	39 x 30′
Le Prince Saphyr	39 x 30′
Lassie	39 x 30′
Les animaux chez eux	39 x 30′
Daniel Boone	39 x 60′
Cent filles à marier	39 x 60′
Alerte dans l'espace	32 x 60′
Le Chapparal	39 x 60′
Le monde en liberté	39 x 30′
Les espiègles rient	39 x 30′
Dr Doolittle	39 x 30′
Lancelot	39 x 30′
Disney	13 x 60′
Marcus Welby	39 x 60′
Simon Locke	26 x 30′

B) DUBBED OUTSIDE CANADA

Bugs Bunny	39 x 30′
Grand Galop et Petit Trot	39 x 30′
Daktari	39 x 60′
Cher Oncle Bill	39 x 30′
Ma Sorcière bien-aimée	39 x 30′
Le Comte Yoster	39 x 30′
Disney	26 x 60′
Les Règles du Jeu	39 x 90′
La Dynastie des Forsyte	13 x 60′
Département S	10 x 60′

APPENDIX "D"

CENTURY II STUDIOS LTD.
EDMONTON, ALBERTA

July 12th, 1973

Senate Standing Committee

On Transport and Communications,

Ottawa, Ontario.

Re: Senate Inquiry Into Broadcast Advertising in Canada

We learned in the current issue of Marketing Magazine, of the inquiry being undertaken into broadcast advertising materials imported into Canada. Unfortunately, we were not aware of the Inquiry prior to this time but are deeply concerned with several aspects of your task.

The Marketing Magazine article suggests that many associations and major advertising agencies have been invited to submit briefs on the matter but nowhere do we see reference made to producers or broadcasters production houses such as our own.

We therefore would ask, that any information pertaining to your Inquiry be forwarded to us so that at least one point of view from the producer's perspective can be submitted. If there is anything else we can do to be of assistance to your Inquiry we would be glad to do so, as would, I am sure, many other production houses.

If our original fears are correct, you are presently dealing with those who purchase materials of this type as opposed to those who make their livelihood and employ hundreds of musicians and artists in the production of them. We might also point out that Century II is not the only major broadcast production house in the West and perhaps our western views may be different from those that you are presently considering.

Forgive this late inquiry but we just learned about your activities today. We are most anxious to be of assistance and to learn of your conclusions.

Respectfully,

CENTURY II STUDIOS LTD.
Dale R. Partridge,
General Manager.

Published under authority of the Senate by the Queen's Printer for Canada

Available from Information Canada, Ottawa, Canada.

CAI YC 14
- 163

Government Publications

FIRST SESSION—TWENTY-NINTH PARLIAMENT
1973

THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING SENATE COMMITTEE ON

TRANSPORT AND COMMUNICATIONS

The Honourable Maurice Bourget, P.C., *Deputy Chairman*

Issue No. 6

FRIDAY, JULY 20, 1973

LIBRARY
MAR 26 1974
UNIVERSITY

Examination of radio and television commercial advertising broadcast in Canada.

REPORT OF THE COMMITTEE

27027

THE STANDING SENATE COMMITTEE ON TRANSPORT AND COMMUNICATIONS

The Honourable J. Campbell Haig, *Chairman*

The Honourable Maurice Bourget, p.c., *Deputy Chairman*

and

The Honourable Senators,

Argue	Langlois
Blois	Lawson
Buckwold	*Martin
Davey	McElman
Denis	Petten
*Flynn	Prowse
Forsey	Smith
Fournier (*Madawaska-Restigouche*)	Sparrow
Graham	van Roggen
	Welch

**Ex officio members*

20 Members

(Quorum 5)

Order of Reference

Extract from the Minutes of the Proceedings of the Senate, Thursday, May 24, 1973:

"The Honourable Senator Buckwold moved, seconded by the Honourable Senator Boucher:

That the Standing Senate Committee on Transport and Communications be authorized to examine and report upon the question of the advisability of steps being taken to ensure that all radio and television commercial advertising broadcast in Canada be completely produced in Canada, utilizing Canadian manpower to the maximum possible extent.

After debate, and—

The question being put on the motion, it was —

Resolved in the affirmative."

Robert Fortier,
Clerk of the Senate.

REPORT OF STANDING SENATE COMMITTEE ON TRANSPORT AND COMMUNICATIONS ON RADIO AND TELEVISION COMMERCIAL ADVERTISING BROADCAST IN CANADA

FRIDAY, July 20, 1973

On May 24th, 1973, Senator Sidney L. Buckwold moved the following motion, in the Senate:

> "That the Standing Senate Committee on Transport and Communications be authorized to examine and report upon the question of the advisability of steps being taken to ensure that all radio and television commercial advertising broadcast in Canada be completely produced in Canada, utilizing Canadian manpower to the maximum possible extent."

This motion was adopted on the same day.

The Standing Senate Committee on Transport and Communications held its first meeting on this question on May 30, 1973, at which time it was agreed that it would be desirable to have the study completed before the summer recess.

The Committee invited representative organizations to present briefs and, if possible, to appear before the Committee to answer questions. With very few exceptions, those invited responded favourably and appeared before the Committee.

It should be made clear that at this point the Committee felt it advisable to hear invited groups only, in order to develop a general reaction by interested parties, on the impact of the motion.

The hearings commenced on Tuesday, July 10th and continued through July 11th and 12th, with morning and afternoon sessions each day.

A short summary of the briefs received is herewith submitted:

(1) *Agency Forum*

The Agency Forum represents 52 small and medium sized advertising agencies, all of which are Canadian owned and operated. This presentation was in favour of the motion and suggested that the Government publish and enforce "Guidelines for Good Corporate Citizenship" in which the television and radio advertising industry would be asked to abide by these guidelines which would involve an increased percentage of Canadian content.

The submission emphasized the importance of the cultural impact of advertising, and the presentation concluded with the following:

"We sincerely believe that the overall result of implementing this proposal would be, freer trade in a fairer market that more closely reflects a cultural milieu created by ourselves."

"We also believe that if Canada is not soon to become simply a marketing-module in a multi-national society with head offices in New York, then now is the time for our Government to act."

(2) *J. Walter Thompson Company Limited*

The J. Walter Thompson Company Limited is an American owned, multi-national, agency which has operated in Canada for forty-three years. It is one of the largest advertising agencies in Canada. Although foreign controlled, this agency is operated almost exclusively by Canadians. This brief pointed out that about 68% of the English language and 76% of the French language television commercials are produced in Canada. It was pointed out to the Committee that there has been a small but significant increase in Canadian advertising production during the last five years. This agency agreed in principle with the objectives of the motion but warned that there could be adverse repercussions to the industry generally, if 100% Canadian content was insisted upon.

This brief concluded by indicating that the continued growth of Canadian commercial production is a positive and attainable goal.

It was pointed out there is a need for further information and suggested that it is essential before action is taken, the subject be thoroughly researched.

(3) *The Association of Canadian Television and Radio Artists*

No written brief was received from this organization but a very extensive and informative oral presentation was made. The Association of Canadian Television and Radio Artists (ACTRA) represents the English segment of professional performing and writing talent in the recorded media. The spokesman for this organization said, "we believe that the survival of Canada as a distinct nation is linked directly with communications". He pointed out the difficulties experienced by Canadian talent in obtaining employment and that increased production of Canadian made television and radio commercials would open many job opportunities for Canadians involved in this field. It was emphasized that it would be difficult to achieve 100% Canadian content because of geographic and climatic limitations. ACTRA considers that the number of commercials made outside of Canada was "inordinately excessive". It was also stated that foreign produced commercials have a very clear and perhaps an undue influence and impact on our culture. ACTRA emphasized that a substantial field of talent was available and the Committee was assured that Canadians were well able to provide professional know-how in making Canadian production possible. ACTRA

did not consider the increase in the number of Canadian produced advertisements over the past five years as being adequate. It was very strongly in favour of the objectives of the motion.

(4) *L'Union des Artistes*

The *Union des Artistes* is a professional union which groups more than 1550 regular members and more than 800 trainees. As advertisers, singers, comedians, dancers and so on they all exercise their talent in the theatre, in films, on radio, on television, in dubbing and in advertising.

In their brief, they assert that the situation of French speaking performers is about the same as that of their English colleagues since, they allege, that if the latter have to fight against the invasion of American culture, they have a lot to do to avoid being submerged by the ever increasing invasion of productions from France and French speaking countries.

This organization claims to be affected by the importation of advertising material. On the cultural level, the character of these advertisements does not in their views, reflect in anyway our Canadian way of life.

The brief also mentions, that the dubbing in French of American advertising does not require the hiring of more than one or two announcers who are usually already employed on a full time basis by a radio or television station. The group believes that the production of this same publicity in Canada would entail the hiring of hundreds of Canadian technicians, producers, scriptwriters and artists which would, in turn, help an early establishment of a viable film industry in the country.

To conclude, the artists say that it is high time to recover as much as possible the production potential of this industry and thus, to bring about an increase of job opportunities for all our artists, following in that the example of the United-States with the 1967 Labor Act, which goes as far as restricting considerably the live participation of foreign artists on the stage.

(5) *McConnell Advertising Company Limited*

This is a large Canadian owned and operated advertising agency. The brief emphasized the importance of the cultural impact of advertising and indicated that advertising contributed "to the moulding of a distinctive Canadian identity and a significant fact in the development of a culture for our nation." It was suggested that a realistic goal would be to see 80% Canadian produced television and radio commercials as an optimum level to be achieved by 1977. This brief recommended that incentives should be created to encourage domestic production of radio and television commercials rather than penalties imposed for the importation of materials produced in foreign countries.

This agency proposed that "a company producing commercials for radio or television in Canada be allowed to claim 150% of the cost of production of the commercial as a deductible expense when calculating its corporate taxes."

(6) *Association of Canadian Advertisers Incorporated*

The Association of Canadian Advertisers is a non-profit service organization with a membership of over 200 Canadian advertisers whose combined budgets form approximately 75% of the total amount spent on national advertising. This brief emphasized the difficulties that would be encountered in advertisrs achieving 100% Canadian content. The ACA express sympathy with the objectives. It was considered that the present rate of expansion of Canadian made television and radio commercials was satisfactory and that advertisers were responding to the request of the CRTC for increased Canadian production. It was indicated that there could be adverse effects on the advertising revenue of television and radio stations, in that increased production costs for some advertisers might result in a shift in the use of advertising media.

The brief concluded as follows:

"The Association of Canadian Advertisers is in favour of progressively increasing the use of Canadian produced commercials. The Association does not, however, believe that it is advisable at this time to take steps to ensure that all radio and television advertising be completely produced in Canada."

(7) *The Canadian Broadcasting League*

The Canadian Broadcasting League is an affiliation of associations and individual members, including 32 principal national and regional organizations. The Canadian Broadcasting League requested regulations requiring 100% Canadian content. Under questioning from the Committee, they agreed that some exceptions would be necessary. The brief concluded as follows: "The Canadian Broadcasting League, therefore, urges that this Committee act to ensure that all commercial content of radio and television programming be produced in Canada, and utilizes Canadian resources to the maximum possible extent, to reflect the tastes and character of Canadians."

(8) *Mr. Sidney Handleman, M.P.P.*

Mr. Sidney Handleman, M.P.P., is a Member of the Ontario Select Committee on Economic and Cultural Nationalism, but he made it very clear that the views he expressed were his own and not those of the Committee. He made available to our Committee copies of a study of the Advertising Industry made for the Ontario Committee by Kates, Peat, Marwick & Co. This publication provided our Committee with valuable background statistical information. He pointed out that their studies indicated that, while 70% of the commercials are now being produced in Canada, the 30% which are imported represent a great deal more in dollar value. Mr. Handleman, while agreeing with the importance of Canadian content, stated that "I am philosophically opposed to 100% content because there are many examples where it would be completely unworkable."

(9) *The Canadian Broadcasting Corporation*

The CBC stressed that its main interest lies in the field of broadcasting. The Corporation agreed that greater Canadian content in advertising is desirable, but stated that private broadcasters affiliated with the CBC expressed concern if restrictions were imposed on foreign made advertising. These affiliated stations feared a substantial loss of revenue.

It was also stated that if such restrictions were made it is possible that advertisers might switch to other media and perhaps would make greater use of U.S. broadcast stations serving border areas.

The CBC stated that progress is being made toward the greater Canadianization of commercials on Canada's broadcast media. It would be happy to co-operate in assisting Canadian advertisers to achieve this objective.

(10) *Canadian Radio-Television Commission*

The CRTC considers this subject very important, not only to Canadian performers but also to Canadian companies and all those who are employed in the industry. It was most emphatically stated to the Committee that the CRTC has been seriously considering this subject for a number of years. In the late winter of 1970 Mr. Juneau expressed the opinion of the Commission that advertisers should regulate themselves in this regard and make their commercials in Canada. This request was reiterated in a speech to the Association of Canadian Advertisers in May of 1972.

In its brief to our Committee it was stated "the CRTC has watched with considerable interest to see the effects the appeals to advertisers to produce their commercials in Canada have had" and after thoroughly reviewing the results the Commission has concluded "that in today's context the situation now calls for formal regulatory action."

The Commission considered that in the case of radio "there is no doubt that a 100% Canadian commercial production requirement should be established."

The brief of the CRTC concluded as follows: "The CRTC is convinced the necessary competence exists in Canada and that substantially improved performance can now be required of advertisers in this country. The Commission is of the opinion generally that television commercials are extremely important showcases, both for the best Canadian creative talent and for Canadian companies and products, and consequently should be conceived and produced within our borders. It must not be forgotten that extremely important values are communicated through commercials with even more precision, often, that through programming. It is important that these values grow out of our society, not out of another, perhaps inappropriate milieu, with different institutions and public goals. Canadian commercials should be connected with the Canadian imagination, with Canadian needs, and be able to reflect better the use and role of products and services in Canadian life."

In addition to the foregoing witnesses who appeared, written communications were received from the following:

The CTV Television Network Ltd.
Century II Studios Ltd., Edmonton, Alberta
CKLW-TV, Windsor, Ontario

It was brought to the attention of the Committee that a ban on the use of American produced commercials could create problems for border television and radio stations.

Evidence given to the Committee revealed the growing importance of the production of television commercials being made in Canada for use by American advertisers in the U.S. Several witnesses indicated apprehension as to the possibility of loss of business in this field. This matter requires further investigation.

As a result of these hearings the Committee agreed in principle to the objective of the resolution.

The committee recommends that television and radio commercials should be made in Canada to the maximum possible extent.

It is recognized that common sense and practical realities may require some limitation to this objective.

It is also appreciated that a reasonable period of time would be required for implementation.

In the opinion of the Committee, the evidence received indicates that there is reason for concern by Canadians generally in this important field of activity. Consequently, and in order to avoid duplication of effort and expenditure, we urge that the CRTC undertake in-depth studies, consultations and public hearings that will lead to appropriate regulations designed to achieve the objectives of this Committee.

The Committee is grateful to the groups and individuals who made such a meaningful contribution to the hearings. I would also like to commend the clerks, stenographers and translators who gave so unselfishly of their time.

Respectfully submitted,

MAURICE BOURGET,
Deputy Chairman.

Published under authority of the Speaker of the House of Commons by the Queen's Printer for Canada

Available from Information Canada, Ottawa, Canada

Government Publications



First Session—Twenty-ninth Parliament

1973-1974

THE SENATE OF CANADA

STANDING SENATE COMMITTEE

ON

TRANSPORT AND COMMUNICATIONS

The Honourable J. CAMPBELL HAIG, *Chairman*

INDEX

OF PROCEEDINGS

(Issues Nos. 1 to 6 inclusive)

27689—1

Prepared

by the

Reference Branch,

LIBRARY OF PARLIAMENT.

INDEX

ACA
See
Association of Canadian Advertisers Inc.

ACTRA
See
Association of Canadian Television and Radio Artists

Actors
Working conditions, government protection
Canada 4:8-9, 18-9, 21-3, 25-7; 5:14, 20
France 4:20
Other countries 4:19, 25-6
See also
Association of Canadian Radio and Television Artists
Union des Artistes

Advertising
Australia, industry, situation 3:24-5; 4:36; 5:43
Border areas 3:30; 5:6, 9, 21-2, 42; 6:6
Canadian content, meaning 4:11-2
Canadian—produced
Canadian talent, employment, availability 3:6-7, 10, 17, 19-20, 27-30; 4:6-7, 14-5, 19, 27-9, 41-4; 5:6, 14, 18, 37, 39, 41-2
CBC 5:24
Disadvantages, foreign-produced 3:5-6, 16, 30, 32; 4:11, 17, 35; 5:12, 16
Foreign companies, expenditures 4:49
Incentives proposed 4:29, 31-4, 36-7, 39; 5:16, 18, 20, 21-2
Income, performers 5:36
Increase, restriction on importation, effects 3:6-7, 9, 12-6, 18-21, 23-4, 31, 33-4; 4:7, 11-2, 16-8, 23, 29, 31, 33-4, 37, 40, 56-7; 5:6, 9, 18, 25, 28-9, 32-3, 36, 40, 42-4
Proportion, present, suggested 3:6-8, 10, 12-3, 17-8, 20-1, 28-9; 4:7, 11, 16, 23, 29, 31, 33-5, 37-8, 40-1, 44-9, 52-4, 56; 5:9, 12-7, 24-9, 34-9, 42
Recommendations, report to Senate 6:6
Toronto, volume, value 4:27, 32, 44, 53-4; 5:13, 37-8
Value 4:32, 49, 54
Commercials, quality 3:10, 14-5; 5:10-1, 24, 44
Companies, foreign-based in Canada benefits, present conditions 3:5-6, 16, 19
Expenditures, Canadian and foreign productions, survey planned 4:46, 48, 53-4; 5:37, 39
Foreign-produced
Adaptation, Canadian market 4:48; 5:17, 25
Cable television, value 5:42
For Canadian companies 4:13
Importation
Custom tariff assessment, costs, volume 3:5-6, 9, 16, 30, 32; 4:7, 11-2, 17, 35, 37-8, 41, 44; 5:5, 12, 15-6, 25, 36, 40-1
Restriction, effects 3:6-9, 12-6, 18-21, 23-4, 31, 33-4; 4:7, 11-2, 16-8, 23, 29, 31, 33-4, 37, 40, 56-7; 5:6, 9, 18, 25, 28-9, 32-3, 36, 40, 42-4
Purchase 5:32
Value 3:6 18-9, 26; 4:12, 32; 5:6
France 5:43
French language
Canadian-produced 3:20-2; 4:20, 23-8; 5:26, 29, 36-7
Dubbed into French 4:19-25, 27; 5:26, 29-30, 44
Impact, cultural, other 3:7, 9, 14-5, 20, 30; 4:16-7, 28, 31, 35-6, 51-2; 5:9-11, 13, 17-8, 27, 36-7, 39
Media placement 5:14
Production, Canadian, foreign
Choice 4:47-8
Survey planned 4:46, 48, 53-4; 5:37, 39
Québec production tax 4:24
Radio station I.D.'s, jingles 4:7, 16, 40, 53; 5:30-1, 40-1
Reader's Digest Association (Canada) Limited 4:53
Standards, guidelines 5:39-40
Television
CN/CP, "The Canadian Dream" 4:27
International campaigns 3:6, 9-10; 4:29-30, 35-6; 5:16
Production costs 3:6, 13, 26, 32; 4:12, 33, 40
Survey, Canadian, foreign production, ACA/ICA 3:6, 10, 12-3, 17-8, 26, 28, 40-1, 46, 52; 4:7; 5:24-5
Type commercials, Canadian, foreign-produced 3:10-1, 21, 24
Videotapes 4:44-5
See also
Actors, actors' associations
Advertising agencies
Advertising Industry
Canadian Broadcasting Corporation
Canadian Broadcasting League
Canadian Radio-Television Commission
Individual agencies, representative associations
Ontario Select Committee on Economic and Cultural Nationalism

Advertising Agencies
Clients, media placements 3:32-3
Commercials, foreign-produced, importation ban, effect 3:7, 13
Definition, role 3:5, 18
Ownership
Canada
Canadian, foreign, present situation 4:38
Increased Canadian, effect 5:19
England, situation 5:16
See also
Individual agencies, representative associations

Advertising Industry
Canadian-produced advertising, position 3:22-3, 29-30; 4:10-1, 15; 5:45
Employment situation 3:6-7, 10, 17, 19-20, 27; 4:6-7, 14-5, 19, 27-9, 41-4; 5:6, 14, 18, 37, 39, 41-2
Production for American markets 3:11, 15, 19, 21, 25-8; 4:12-3, 16, 29-31, 33, 44-5, 53-4; 5:12-4 21, 26
Separate commercial broadcast facilities, ownership 3:28
See also
Individual agencies, representative associations

Ontario Select Committee on Economic and Cultural Nationalism

Agency Forum Committee on Nationalism
Background 3:5, 11
Member agencies, advertising production for American markets 3:11, 15
Ontario Select Committee on Economic and Cultural Nationalism, brief to, discussion 3:5, 9-11
Radio, television advertising
Brief, presentation, summary 3:5-7; 6:4
Recommendations 3:6-9, 12-6
See also
Advertising
Advertising Agencies
Advertising Industry

Aircraft
Liens, registration 2:7-8
Registration
Rights, loss, non-registration 2:8
Searches, present arrangements 2:6
Voluntary 2:8
Sales, conditions 2:7
Seizure 2:7-8
See also
Central Aircraft Registry

Aircraft Registry Act
See
Bill S-9

Association of Canadian Advertisers Inc.
CRTC statements, Canadian-produced advertising, reaction 4:46-7
Joint Broadcast Committee, survey, television commercials 3:6, 10, 12-3, 17-8, 26, 28, 40-1, 46, 52; 4:7; 5:24-5
Members, membership 4:49-51, 53
Radio, television advertising
Brief, presentation, summary 4:40-1; 6:5
Recommendations, position 4:40, 45-50, 55; 5:25-6
See also
Advertising
Advertising Industry

Association of Canadian Television and Radio Artists
Agreement, Canadian-produced advertising 3:17, 22-3; 4:10, 15, 34
Blackground, role, activities 4:6, 9, 14-5
Canadian-produced advertising, position, recommendations 4:5-8, 15, 17-8; 6:4-5
Members, membership 4:8-10, 13-4
Work permits, non-members 4:8-10, 41-4
See also
Actors
Advertising

Association of Motion Picture Producers and Laboratories of Canada
Foreign-produced advertising, request, change customs tariff 5:36

Beckerman, Jerrald, Vice-President and Director of Consumer Information, J. Walter Thompson Company Limited
Television, radio advertising 3:26

Bill C-127—An Act to amend the Pilotage Act
Purpose 1:6, 8
Report to Senate without amendment 1:5

Bill S-9, Aircraft Registry Act
Discussion 2:6-9
Clause 10: Sale of aircraft 2:7
Legislation delayed 2:6
Provinces, reaction 2:8
Publicity 2:8
Purpose 2:6
Reciprocity, other countries 2:7
Report to Senate without amendment 2:9

Blakely, W. T., President, Association of Canadian Advertisers Inc.
Radio, television advertising 4:47-53

Bourget, Hon. Maurice, Senator (The Laurentides)
Bill C-127 1:8

Bourget, Hon. Maurice, Senator (The Laurentides), Deputy Chairman
Bill S-9 2:6-9
Examination of radio and television commercial advertising broadcast in Canada 3:5, 7-9, 12-7, 21, 31, 34; 4:5-6, 8-9, 12-4, 17, 19-22, 26-8, 30, 37-9, 45, 48-50, 55; 5:5-7, 11, 15, 17-9, 24-6, 33-5, 37, 42-4

Broadcasting
Windsor, Ont., situation 5:23-4, 25

Buckwold, Hon. Sidney L., Senator (Saskatoon)
Examination of radio and television commercial advertising broadcast in Canada 3:8-10, 16, 23-5, 27, 29-32; 4:8, 10-3, 17, 22-4, 28, 30-3, 35-6, 40-9, 51, 54

CBC
See
Canadian Broadcasting Corporation

CRTC
See
Canadian Radio-Television Commission

CTV
See
CTV Television Network Ltd.

Canadian Broadcasting Corporation
CKLW-TV (Windsor, Ont.), ownership 5:23, 25, 31
Canadian content programming 5:28, 31, 35
Canadian-produced advertising, increase, position 5:25, 27-8, 35; 6:6
Commercials
Production 5:24
Selection 5:34-5
Foreign-produced programs, effect, French culture, identity 5:33
French language programming, quality, slang 5:33-4
Productions dubbed into French 4:21, 5:29-30, 33, 47
See also
Radio-Canada

Canadian Broadcasting League
Background, functions, membership, purpose 5:5-9, 12
Canadian talent, development, encouragement 5:11

Radio, television advertising
Brief, comments, summary 5:5-6; 6:5
Recommendations, position 5:5-6, 9, 12-5

Canadian Radio-Television Commission
Advertising
Canadian-produced
Enforcement role suggested 3:8-9
Position, statements 3:7, 28-9; 4:46-7; 5:27, 36-9, 42-3; 6:6
Foreign-produced, importation, ban not imposed 5:36
Standards, guidelines 5:39-40
Survey, production, expenditures, planned 4:46, 48, 53-4; 5:37, 39
Cable companies, deletion foreign commercials 5:21, 41
Canadian content regulations, broadcasting 3:17, 18, 28, 30-2; 4:38-9, 52; 5:6, 16, 28, 41
Canadian talent, production industry, encouragement 5:41-2

Canadian Transport Commission
Appeals 1:7-8

Carter, Hon. Chesley W., Senator (The Grand Banks)
Bill C-127 1:8
Examination of radio and television commercial advertising broadcast in Canada 5:34-5, 39-40, 44

Central Aircraft Registry
Claims registered, renewed 2:6-7
Establishment 2:6
Functions 2:6
Purpose 2:6
Reciprocity, other countries 2:7
Searches, proposed mechanics 2:6

Century II Studios Ltd.
Letter to Committee 5:48

Choquette, Hon. Lionel, Senator (Ottawa East)
Bill S-9 2:6-8

Cowie, C., Aircraft Licensing Section, Transport Ministry
Bill S-9 2:8

Cronin, John, Executive Vice-President, J. Walter Thompson Company Limited
Television, radio advertising
Brief, presentation 3:18-20
Discussion 3:23-32

CTV Television Network Ltd.
Canadian-produced advertising, position 4:56-7
Letter to Committee 4:56-7

Dampsy, J. V., Vice-Chairman and Treasurer, Association of Canadian Advertisers Inc.
Radio, television advertising 4:51-2

Davey, Hon. Keith, Senator (York)
Examination of radio and television commercial advertising broadcast in Canada 3:11-3, 22, 25, 27-30; 4:5, 13-6, 21, 24-7, 30, 34-7, 42, 45, 48-54; 5:7-10, 13, 17-24

David, Raymond, Vice-President and General Manager, French Services Division, Canadian Broadcasting Corporation
Radio, television advertising 5:26, 29-30, 33-4

Denis, Hon. Azellus, Senator (Lasalle)
Examination of radio and television commercial advertising broadcast in Canada 3:14-5; 4:9, 17; 5:32-4

Downie, Ivor, President, Downie Advertising Limited, and Moderator, Agency Forum
Radio, television advertising 3:8-16

Dugas, Jean-Paul, Member, Union des Artistes
Radio, television advertising 4:19-28

Dussault, Captain L. Michel, Director, Marine Pilotage Branch, Ministry of Transport
Statement 1:6

Film industry
Canadian Film Development Corporation, incentives 4:32

Fisette, Philippe, Vice-President and Director of Canadian Broadcast Production, J. Walter Thompson Company Limited
Television, radio advertising
Brief, presentation 3:20
Discussion 3:21

Flynn, Hon. Jacques, Senator (Rougemont)
Bill C-127 1:6-9

Forsey, Hon. Eugene A., Senator (Nepean)
Bill S-9 2:6-8
Examination of radio and television commercial advertising broadcast in Canada 3:10, 29-31; 4:7, 26, 42, 52

Fournier, Hon. Edgar-E., Senator (Madawaska-Restigouche)
Examination of radio and television commercial advertising broadcast in Canada 4:8, 15, 22

Fraser, Ronald C., Vice-President, Corporate Affairs, Canadian Broadcasting Corporation
Radio, television advertising 5:27-32

Garriock, Norn, Managing Director, Television, English Service Division, Canadian Broadcasting Corporation
Radio, television advertising 5:26, 28, 31-2

Graham, Hon. B. Alasdair, Senator (The Highlands)
Examination of radio and television commercial advertising broadcast in Canada 3:13-4, 25-6, 31; 4:8, 17-8, 21, 34, 37; 5:7-8, 31, 37, 40-1

Handleman, Sidney, M.P.P., Member, Ontario Select Committee on Economic and Cultural Nationalism
Ontario Select Committee on Economic and Cultural Nationalism, studies, findings, conclusions 5:15-7, 19-24
Radio, television advertising
Discussion 5:17-24; 6:5-6
Statement 5:15-7; 6:5-6

Hart, Ralph, Manager, Radio-Television Development, Planning and Development Branch, Canadian Radio-Television Commission
Radio, television advertising 5:37, 41, 43-4

Hopkins, David, Co-Chairman, Joint Broadcast Committee, Association of Canadian Advertisers Inc.
Radio, television advertising 4:46-50, 52

Hunter, Peter, President, McConnell Advertising Company Limited
Ontario Select Committee on Economic and Cultural Nationalism, testimony 4:37-8
Radio, television advertising
Brief, presentation, summary 4:28-30; 6:5
Discussion 4:30-9
Recommendations 4:29-34, 36-7, 39

ICA
See
Institute of Canadian Advertising

Institute of Canadian Advertising
Members, increased Canadian-produced advertising, position 3:22-3; 4:15; 5:45
Membership 3:23
Non-appearance before Committee 3:22-3; 4:15, 34; 5:5, 45
Survey, television commercials 3:6, 10, 12-3, 17-8, 26, 28, 40-1, 46, 52; 4:7; 5:24-5
See also
Advertising
Advertising Industry

J. Walter Thompson Company Limited (Canadian subsidiary)
Advertising production for American market 3:19, 21, 25-8
Background 3:17-8
Canadian-produced advertising 3:17, 29-30
Consumer Information Department, establishment 3:29
Ownership 3:25
Personnel, recruitment, training 3:26-7
Radio, television advertising
Brief, presentation, summary 3:16-21; 6:4
Recommendations 3:19, 21, 24, 28, 30
Signatory, ACTRA agreement 3:17
Smaller agencies, attitude towards 3:27
See also
Advertising
Advertising Agencies
Advertising Industry

Juneau, Pierre, Chairman, Canadian Radio-Television Commission
Radio, television advertising
Discussion 5:37-44
Statement 5:35-7

Kates, Peat, Marwick and Company
See
Ontario Select Committe on Economic and Cultural Nationalism

Kostyra, Richard, Vice-Pres., Director, Media and Broadcast Production, J. Walter Thompson Company Ltd.
Radio, television advertising 3:29

Laird, Hon. Keith, Senator (Windsor)
Examination of radio and television commercial advertising broadcast in Canada 3:8-9, 15-6, 22-4, 30, 32; 4:5, 7, 10, 15, 17, 25, 30-1, 40-4, 49; 5:9-12, 14, 17-8, 23-7, 31, 38-9

Langlois, Hon. Léopold, Senator (Grandville)
Bill C-127 1:7-8
Examination of radio and television Commercial advertising broadcast in Canada 5:35, 42, 44

Lapointe, Hon. Renaude, Senator (Mille Isles)
Bill S-9 2:7-8
Examination of radio and television commercial advertising broadcast in Canada 3:21; 4:19-20, 27-8; 5:28-30, 43

McCaffrey, Gordon, Member, Board of Directors, Canadian Broadcasting League
Radio, television advertising
Brief, comments 5:5-6
Discussion 5:6-15

McConnell Advertising Company Limited
See
Hunter, Peter

MacDonald, Miss Lynn, Administrative Officer, Canadian Broadcasting League
Radio, television advertising 5:10-3

McElman, Hon. Charles, Senator (Nashwaak Valley)
Examination of radio and television commercial advertising broadcast in Canada 3:10, 15, 31; 4:38-9, 48; 5:9-10, 16, 22, 26-7, 37-8

Marchand, Hon. Jean, Minister of Transport
Comments, Bill C-127 1:9

Miller, Anthony, Vice-President and Group Account-Director, J. Walter Thompson Company Limited
Radio, television advertising 3:21-5, 29-34

Ontario Royal Commission on Book Publishing
Recommendations, foreign publications 5:20

Ontario Select Committee on Economic and Cultural Nationalism
Advertising study, Kates, Peat, Marwick and Company
Advertising industry, Canadian ownership increased, effect 5:19
Canadian, foreign produced advertising
Media time, expenditures 5:17
Value 4:32; 5:15, 17
Briefs received, witnesses
Agency Forum Committee on Nationalism 3:5, 9-11
Hunter, Peter, President, McConnell Advertising Company Limited 4:37-8
Meetings
American broadcasters, publishers 5:22-3
Committee for an Independent Canada 5:23
Ontario Royal Commission on Book Publishing, findings, examination 5:20
Radio, television advertising, importation, position 5:16, 19
Reports to be issued 5:19
Terms of reference 5:15, 20
Windsor, Ont., broadcasting situation 5:23-4

Parrish, Donald, President, Association of Canadian Television and Radio Artists (ACTRA)
Radio, television advertising
Brief, presentation 4:5-6
Discussion 4:8-17

Pengelly, A. Z., Immediate Past President, Association of Canadian Advertisers Inc., and Director, Warner-Lambert Canada Limited
Radio-television advertising
Brief, presentation 4:40
Discussion 4:44-6, 48-53, 55

Petten, Hon. William John, Senator (Bonavista)
Examination of radio and television commercial advertising broadcast in Canada 3:19

Pilotage Act, An Act to amend
See
Bill C-127

Pilotage Authorities
Responsibility 1:6-8

Prowse, Hon. J. Harper, Senator (Edmonton)
Bill S-9 2:6-8
Examination of radio and television commercial advertising broadcast in Canada 3:8-11, 13-6, 19, 23-4, 32-4; 4:7-8, 12-3, 17, 24, 26, 28, 32-7, 39, 41-5, 47-8, 51-2, 55; 5:5, 10-4, 17, 21, 26, 28, 34-5, 39-41

Prowse, Hon. J. Harper, Senator (Edmonton), Acting Chairman
Bill C-124 1:6-9

Primeau, Wayne, Assistant Executive Secretary, Canadian Broadcasting League
Radio, television advertising 5:6-10, 13-5

Radio Advertising
See
Advertising

Radio-Canada
Productions dubbed into French 4:21; 5:29-30, 33, 47
Program exchanges with France 4:20
Purpose 4:23
See also
Canadian Broadcasting Corporation

Reports to the Senate
Bill C-127 1:15
Bill S-9 2:9
Examination of radio and television commercial advertising broadcast in Canada
Briefs, correspondence, witnesses 6:4-6
Recommendations 6:6

Rivard, Robert, President, Union des Artistes
Radio, television advertising
Brief, presentation 4:18-9
Discussion 4:19-28

Robertson, Donald, President, J. Walter Thompson Company Limited
Television, radio advertising
Brief, presentation 3:17-8, 20-1
Discussion 3:22-34

Ross, Henry, Co-Chairman, Joint Broadcast Committee, Association of Canadian Advertisers, Inc.
Radio, television advertising
Brief, presentation 4:40-1
Discussion 4:41-5, 53-5

Royal Commission on Pilotage
Findings 1:6-7

Shields, L., Legal Services, Transport Ministry
Bill S-9 2:6-8

Sinclair, Lister, Executive Vice-President, Canadian Broadcasting Corporation
Radio, television advertising
Discussion 5:25-35
Statement 5:24-5

Siren, Paul, General Secretary, Association of Canadian Television and Radio Artists (ACTRA)
Radio, television advertising
Discussion 4:8-18
Statement 4:6-8

Skinner, Brian, President, Brian Skinner Communications Ltd., and Chairman, Agency Forum Committee on Nationalism
Television, radio advertising
Brief, presentation 3:5-7
Discussion 3:8-16

Sparrow, Hon. Herbert Orville, Senator (The Battlefords)
Examination of radio and television commercial advertising broadcast in Canada 4:8-9; 5:15

Television Advertising
See
Advertising

Transport and Communications Standing Committee
Institute of Canadian Advertising, non-appearance 3:22-3; 4:15, 34; 5:5, 45

Trower, Jack, Director, Sales Policy and Planning, Canadian Broadcasting Corporation
Radio, television advertising 5:25-6, 31, 34

Union des Artistes
Dubbing, English language, Canadian and foreign-produced advertising, programs 4:19-25, 27; 5:26, 29-30
Functions, activities 4:18, 21-2
Members, membership 4:18-9, 21-3
Radio, television advertising
Brief, presentation, summary 4:18-9; 6:5
Recommendations, position 4:18-9, 23
Revenue, Radio-Canada 4:23
Television advertising firms contributing revenue 4:22
See also
Actors
Advertising

VanRoggen, Hon. George C., Senator (Vancouver-Point-Grey)
Examination of radio and television commercial advertising broadcast in Canada 4:53-5; 5:10-4, 17-8, 21-2, 26, 35, 37-8

Appendices
Issue 4
Letter, Murray Chercover, President and Managing Director, CTV Television Network Ltd. 4:56-7
Issue 5
A—Letter, Institute of Canadian Advertising, non-appearance before Committee 5:45

B—Letter, Canadian Association of Broadcasters, Canadian-produced advertising 5:46

C—Canadian Broadcasting Corporation, foreign-produced TV series dubbed into French 5:47

D—Letter, Century II Studios Ltd. 5:48

Witnesses

—Beckerman, Jerrald, Vice-President and Director of Consumer Information, J. Walter Thompson Company Limited

—Blakely, W. T., President, Association of Canadian Advertisers Inc.

—Cowie, C., Aircraft Licensing Section, Transport Ministry

—Cronin, John, Executive Vice-President, J. Walter Thompson Company Limited

—Dampsy, J. V., Vice-Chairman and Treasurer, Association of Canadian Advertisers Inc.

—David, Raymond, Vice-President and General Manager, French Services Division, Canadian Broadcasting Corporation

—Downie, Ivor, President, Downie Advertising Limited, and Moderator, Agency Forum

—Dugas, Jean-Paul, Member, Union des Artistes

—Dussault, Captain L. Michel, Director, Marine Pilotage Branch, Ministry of Transport

—Fisette, Philippe, Vice-President and Director of Canadian Broadcast Production, J. Walter Thomson Company Limited

—Fraser, Ronald C., Vice-President, Corporate Affairs, Canadian Broadcasting Corporation

—Garriock, Norn, Managing Director, Television, English Service Division, Canadian Broadcasting Corporation

—Handleman, Sidney, M.P.P., Member, Ontario Select Committee on Economic and Cultural Nationalism

—Hart, Ralph, Manager, Radio-Television Development, Planning and Development Branch, Canadian Radio-Television Commission

—Hopkins, David, Co-Chairman, Joint Broadcast Committee, Association of Canadian Advertisers Ltd.

—Hunter, Peter, President, McConnell Advertising Company Limited

—Juneau, Pierre, Chairman, Canadian Radio-Television Commission

—Kostyra, Richard, Vice-President and Director of Media and Broadcast Production, J. Walter Thompson Company Limited

—McCaffrey, Gordon, Member, Board of Directors, Canadian Broadcasting League

—MacDonald, Miss Lynne, Administrative Officer, Canadian Broadcasting League

—Marchand, Hon. Jean, Minister of Transport

—Miller, Anthony, Vice-President and Group Account Director, J. Walter Thompson Company Limited

—Parrish, Donald, President, Association of Canadian Television and Radio Artists (ACTRA)

—Pengelly, A. Z., Immediate Past President, Association of Canadian Advertisers Inc., Director, Warner-Lambert Canada Limited

—Primeau, Wayne, Assistant Executive Secretary, Canadian Broadcasting League

—Rivard, Robert, President, Union des Artistes

—Robertson, Donald, President, J. Walter Thompson Company Limited

—Ross, Henry, Co-Chairman, Joint Broadcast Committee, Association of Canadian Advertisers Inc.

—Shields, L., Legal Services, Transport Ministry

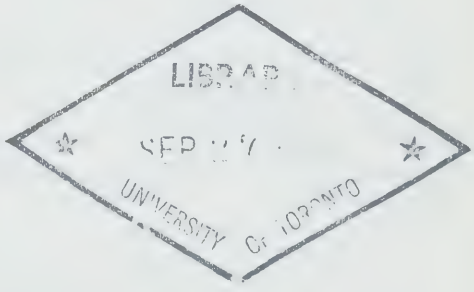
—Sinclair, Lister, Executive Vice-President, Canadian Broadcasting Corporation

—Siren, Paul, General Secretary, Association of Canadian Television and Radio Artists (ACTRA)

—Skinner, Brian, President, Brian Skinner Communications Ltd., and Chairman, Agency Forum Committee on Nationalism

—Trower, Jack, Director, Sales Policy and Planning, Canadian Broadcasting Corporation

For pagination *see* Index in alphabetical order



Published under authority of the Senate by the Queen's Printer for Canada

Available from Information Canada, Ottawa, Canada

Publications

CA1 XC 14
-1973

SECOND SESSION—TWENTY-NINTH PARLIAMENT
1974

THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING SENATE COMMITTEE ON

TRANSPORT AND COMMUNICATIONS

The Honourable J. CAMPBELL HAIG, *Chairman*

Issue No. 1

THURSDAY, MARCH 28, 1974

First Proceedings on Bill S-3, intituled:

"Motor Vehicle Tire Safety Act"

(Witnesses:—See Minutes of Proceedings)

LIBRARY
MAY - 1974
UNIVERSITY

27386—1

STANDING SENATE COMMITTEE ON
TRANSPORT AND COMMUNICATIONS

The Hon. J. Campbell Haig, *Chairman.*

The Honourable Senators:

Blois	Langlois
Bourget	Lawson
Burchill	*Martin
Denis	McElman
Eudes	Molgat
*Flynn	Petten
Forsey	Prowse
Fournier (*Madawaska-Restigouche*)	Riley
	Smith
	Sparrow
Graham	van Roggen
Haig	Welch

20 MEMBERS

(Quorum 5)

**Ex officio member*

Order of Reference

Extract from the Minutes of the Proceedings of the Senate, March 26, 1974.

"Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Neiman, seconded by the Honourable Senator Rowe, for the second reading of the Bill S-3, intituled: "An Act respecting the use of the national safety marks in relation to motor vehicle tires and to provide for safety standards for certain motor vehicle tires imported into or exported from Canada or sent or conveyed from one province to another".

After debate, and—
The question being put on the motion, it was—
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Neiman moved, seconded by the Honourable Senator Hicks, that the Bill be referred to the Standing Senate Committee on Transport and Communications.

The question being put on the motion, it was—
Resolved in the affirmative."

Robert Fortier,
Clerk of the Senate.

Minutes of Proceedings

Thursday, March 28, 1974.
(2)

Pursuant to adjournment and notice, the Standing Senate Committee on Transport and Communications met this day at 10.00 a.m., to consider Bill S-3, intituled "Motor Vehicle Tire Safety Act".

Present: The Honourable Senators Haig (*Chairman*), Bourget, Denis, Forsey, McElman, Petten, Riley and van Roggen. (8)

Present, but not of the Committee: The Honourable Senators Benidickson, Neiman, McGrand and Smith. (4)

In attendance: Mr. E. R. Hopkins, Law Clerk and Parliamentary Counsel.

The Honourable Senator Bourget moved, that unless and until otherwise ordered by the Committee, 800 copies in English and 300 copies in French of its day-to-day proceedings be printed.

The following witness was heard on behalf of the Canada Safety Council:

Mr. P. J. Farmer,
Executive Director.

The Committee adjourned at 10.55 a.m. to the call of the Chairman.

ATTEST:

(Mrs.) Aline Pritchard,
Clerk of the Committee.

The Standing Senate Committee on Transport and Communications

Evidence

Ottawa, Thursday, March 28, 1974.

The Standing Senate Committee on Transport and Communications, to which was referred Bill S-3, respecting the use of national safety marks in relation to motor vehicle tires and to provide for safety standards for certain motor vehicle tires imported into or exported from Canada or sent or conveyed from one province to another, met this day at 10 a.m. to give consideration to the bill.

Senator J. Campbell Haig (*Chairman*) in the Chair.

The Chairman: Honourable senators, we are meeting this morning to discuss Bill S-3. We have as our witness Mr. P.J. Farmer, Executive Director, Canada Safety Council.

Mr. P.J. Farmer, Executive Director, Canada Safety Council: Thank you, Mr. Chairman.

Honourable senators, I am appearing before you this morning in a dual role, representing the Canada Safety Council and also the Canadian Standards Association Committee on Automobile Tire Standards.

The Canada Safety Council, as probably most of you know, is a non-governmental, non-profit, charitable organization, chartered under federal law. We have support from the federal and provincial governments, from business and industry and from many national associations in Canada. Our primary role is one in the field of accident prevention; we co-operate with all groups in Canada, and act as a co-ordinating body to reduce the number of accidents which take place, not only on our streets and highways but in our work places and homes and in public areas.

Mr. Chairman, if you agree, I shall make a brief statement on Bill S-3, and then if honourable senators have any questions they would like to throw my way I would be very pleased to try to answer them.

The Chairman: Very well.

Mr. Farmer: In Canada, prior to 1966 there were no standards or regulations governing the manufacture, sale or application of passenger car tires. This situation resulted in a great deal of confusion on the part of the public, government officials and even people selling tires. A serious side effect was the misapplication and misuse of many tires by motorists. Although accurate statistics were not available, these unsafe practices contributed to the rising toll of traffic accidents.

As a result of growing public concern, the Canada Safety Council officially requested the Canadian Standards Association to develop Canadian automobile tire standards.

In the fall of 1966, a C.S.A. Committee on Automobile Tire Standards was formed, and I was asked to act as the committee chairman. The committee membership represented the federal and provincial governments, manufacturers, users, the Canada Safety Council and other national organizations.

Over the two years following 1966 the committee developed three national standards:

Standard D238.1—Performance standards for the manufacture of passenger car tires and rims.

Standard D238.2—Application standards for the selection of tires and rims.

Standard D238.4—Inspection requirements for passenger car, station wagon and passenger car trailer tires used on highways.

A fourth standard, D238.3, for the recapping and repair of tires has not been completed as of this date. Standards D238.1, D238.2 and D238.4 were adopted by the provincial governments in Canada.

While the federal government, through the Ministry of Transport, was able to control the use of tires on original equipment, the provinces were left to police the after-market, which, incidentally, is the largest part of the tire market. Without inspection and testing capability this has proved to be a most difficult task.

Bill S-3, which is being considered by your committee, will control the manufacture, importation and sale of passenger car tires. This will assure that all tires sold in Canada will meet safety performance standards. To this end the Canada Safety Council supports Bill S-3.

I would like to point out, however, that unless passenger car tires are maintained to meet safety standards, and unless tires sold in the after-market are selected to meet the specific application for which the tires will be used, they will be unsafe and will represent a hazard to the motoring public. These requirements must be met by provincial regulation. This is not covered under the bill that you are considering.

Mr. Chairman, those are my formal remarks. I would be pleased to accept any questions the committee may have.

The Chairman: Are there any questions, honourable senators?

Senator van Roggen: First, is similar legislation common in other countries that manufacture tires—for example, Europe and the United States?

Mr. Farmer: It is in the United States, and there is an ISO standard in Europe which is being used, I believe, quite widely now.

Senator van Roggen: So this would not tend to be restrictive in so far as Canada's developing its tire manufacturing for export to the United States is concerned?

Mr. Farmer: That is right. I am not sure what standards the federal government would adopt, but I think they would be similar to the Canadian Standards Association standards and also the standards used in the United States. So I am sure this would not be restrictive on trade between the United States and Canada. Moreover, most of the European tires manufactured now, and the Japanese, do conform to both the American and the Canadian standards.

Senator van Roggen: Would you go so far as to say that this is just bringing us into line with the other countries?

Mr. Farmer: Well, no, we have these standards now in effect in Canada, but the problem is with respect to the enforcement of these standards. We have not had the teeth, let us say, in legislation which would force the manufacturers to conform to performance standards in the manufacture of tires.

Senator van Roggen: There has been no federal enforcement possible?

Mr. Farmer: Other than with respect to the equipment used on original vehicles when they are being manufactured.

Up to this time the problem has been that the after-market represents probably two-thirds of the total Canadian tire market in Canada. That is an approximate figure.

Senator van Roggen: What do you mean by the "after-market"?

Mr. Farmer: The after-market is the replacement of tires when the original tires wear out.

Senator van Roggen: In other words, just going into a tire shop and buying tires, and so on?

Mr. Farmer: Yes, that is right. These were controlled, really, by provincial legislation through the highway traffic acts, and such tires had to meet the CSA standards. But the problem, as we see it, is that the provincial governments do not have inspection capability or testing capability. The regulations are on the books, but we have had some doubt as to whether they are capable of enforcement.

Senator van Roggen: How will this act apply? Will you be endeavouring to enforce it down at the retail level, or will it be enforced at the manufacturing level and when tires are imported into Canada?

Mr. Farmer: I cannot speak for the federal government, but I presume they will be enforcing it at the resale level and at the importation level.

Senator van Roggen: I presume that if you catch the manufacturing and the importation you have all the tires.

Mr. Farmer: Well, I think you have.

Senator van Roggen: You can't make them at home very well!

Mr. Farmer: No, you are right, I think. I believe most of the tires manufactured in Canada, in fact all of them, conform to these standards now.

Senator van Roggen: What effect will this have on retreading?

Mr. Farmer: Unless they bring in a bill to cover retreads, there is nothing to handle that in Canada now; there is no standard.

Senator van Roggen: It is not covered in this bill?

Mr. Farmer: No, it is not. The effect of this bill is to assure the standards to which tires will be manufactured. This is really what you are doing through this bill: it will assure that any tires offered for sale in Canada will meet design performance standards. In other words, they will be manufactured to safety designs and should be adequate for the duties to which they will be applied.

There is a weakness in this picture, however. The provinces have adopted the CSA standard which calls for the proper application of tires. In other words, if you have a certain weight or size of vehicle you are required to put a certain size tire on that vehicle in order to meet load requirements and other requirements for safety reasons. But this bill does not touch that. You can go out in the after-market and buy any tire being offered for sale.

Senator van Roggen: In other words, you can buy the wrong tire for the particular vehicle?

Mr. Farmer: That is right. That is one of the problems we faced when the CSA committee came into being: there were no standards applicable in Canada, or anywhere else at that time, to require the proper tires to be put on on a certain application.

The third standard we produced was the standard for inspection and maintenance of tires because, again, at that time there was no requirement for motorists to keep their tires in safe operating condition.

There are few good statistics available, but from studies done the indication is that the number of traffic accidents caused by tire failure is quite low, being less than 1 per cent. But the startling fact is that most of the basic causes of failure are not related to flaws in the original manufacture but are related to misapplication of tires or lack of maintenance—for example, people running their vehicles with bald tires or tires which are under-inflated or overloaded, and so on. That is a feature which will not be covered by this bill, and I do not think it can be covered under federal regulation. It has to go back to the provinces where it can be covered under a highway traffic act.

But the important point here is that this bill will certainly give uniform coverage for the manufacture and sale of tires.

Senator Bourget: Mr. Farmer, have the provinces been consulted about this bill?

Mr. Farmer: I understand they have, yes.

Senator Bourget: All of them?

Mr. Farmer: I cannot answer that, sir, but I believe they have all been consulted. I think Dr. Campbell, of the Ministry of Transport, who will be appearing as a witness before your committee, will be able to give you that information.

Senator Bourget: I believe this is an important point, Mr. Chairman, because it may involve a question of jurisdiction. I am not a lawyer and I am not an expert in this kind of thing, like Senator Forsey, but in my opinion it is important to know whether the provinces have been advised, whether they approve the bill and whether it will be necessary, in respect to enabling legislation, for the provinces to cover this bill as well.

Mr. Farmer: I understand that the matter has been talked about with the provinces, senator.

Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel: Senator Bourget, the witness who is appearing next week, Dr. Campbell, should be armed with the answers to your questions, but I agree with you that the matter is not free of jurisdictional problems.

Senator Bourget: So we will have our answers next week on that particular point.

Mr. Farmer: I believe Dr. Campbell can give you the assurances on that, yes.

Senator Denis: The provinces do have the right to pass legislation or make regulations in this regard?

Mr. Farmer: Yes, they can do so under their highway traffic acts, because the regulation of vehicles, provincially, comes under each province.

Senator Denis: There is no danger of duplication of bills?

Mr. Farmer: Well, I believe Bill S-3 has to be passed with the approval of the provinces. I would think part of it does overlap provincial jurisdiction, which is why I feel the point raised by Senator Bourget is most appropriate, that is, that the provinces be consulted. It is my understanding that they have been, but I think your next witness will be able to confirm that. In any event, it does cut across provincial jurisdiction.

Senator Bourget: That is what I thought. That was the reason for my question.

Senator Denis: Mr. Farmer, at the present time tires with studs are forbidden in some provinces but are allowed in others. I suppose this bill does not touch that aspect, does it?

Mr. Farmer: No, it does not.

Senator Denis: But this bill is made for safety purposes, and, I think, for two reasons. In some provinces they do not allow tires with studs, because sometimes they skid more than other kinds; and, secondly, they are causing deterioration in the roads. But, in any case, how can we go from one province to another, if in some provinces they are still allowed, but in others they are not, and if you cross the border and you are caught you pay a fine?

Mr. Farmer: Well, this is something that will be under provincial law, and I do not think it can be handled federally.

Mr. Hopkins: I think, in the light of the developments here, it might be desirable to have someone from the Department of Justice attend our meetings, in case there are legal and constitutional implications.

The Chairman: It shall be done.

Senator Forsey: I was going to say, Mr, Chairman, that with great respect to the lawyers here I rather doubt whether any jurisdiction can be conferred upon the Parliament of Canada by the consent of the provinces. I do not know if Mr. Hopkins would agree with me on that.

Mr. Hopkins: Of course, that is correct.

Senator Forsey: If there is jurisdiction, there is jurisdiction, if there is not, there is not, and the provinces can hurrah till their throats are hoarse, but it will not confer any jurisdiction.

Mr. Hopkins: And it will not take away any.

Senator Bourget: But at least there should be agreement between the provinces that . . .

Senator Forsey: I am not questioning that at all, that it would not take away any jurisdiction, but I am merely saying that as I understand the law the consent or dissent of the provinces cannot affect jurisdiction.

Senator Bourget: With that I agree.

Mr. Hopkins: It is a matter of co-operative federalism.

Senator Forsey: Yes.

Senator Bourget: Even not being a lawyer, I can see that that makes sense.

The Chairman: In the opinion of the majority, we have decided there is no conflict of jurisdiction between Forsey and Hopkins!

Mr. Hopkins: No, there is no conflict of opinion. There may be some jurisdictional problems.

Senator Forsey: Indeed, there may.

The Chairman: When Senator Neiman introduced this bill the other day she indicated that the provincial authorities had been consulted in relation that the motor Vehicle Safety Act.

Senator Neiman: Yes. There had been, as I indicated in my remarks, Mr. Chairman, meetings of all the provincial ministers of transports and the federal Minister of Transport. There had been a series of meetings at which it was agreed that the federal government should take over the regulation of motor vehicle safety, generally, of new cars and of the components of motor vehicles. This was confirmed, apparently, by a letter. The Chairman of the meetings wrote to the federal government confirming the wish of the provinces that had been indicated at the meeting that the federal government take over, and this was done prior to the passage of the original act. It was as a result of that that the original act was drawn.

Apparently, in the last couple of years they have had further meetings, and it was at that point that the provinces indicated that they would like them now to take over the regulation of all new tires, not just the ones that were on new vehicles, and that is what this bill deals with. It

does not get into the further problems of retreaded tires, or anything like that, because that is going to be another ball game entirely. They are still just dealing with new tires, whether they are made here in Canada or whether they are imported from some other country. I have copied of a couple of the pieces of enabling legislation which have been passed by the provinces after the original act was passed.

I agree, however, that at your subsequent meetings you are certainly going to have to have some of the Department of Justice Officials here to give their comments on this and on what has happened, because some of the provinces have not yet passed their enabling legislation. Quebec certainly has not, and there may be other provinces that have not, so it seems rather peculiar. It is rather an awkward position for the federal government to be in: they have got the legislation, but they really cannot act under it; they cannot prosecute under it, in any sense.

Senator van Roggen: I cannot agree with that, Mr. Chairman, I am sorry.

Senator Neiman: With what?

Senator van Roggen: That the federal government could not prosecute under it.

Senator Neiman: Well, if it has to do with something that is right within the jurisdiction of the provinces, I do not see how it can. I may be wrong about that, but it seems to me that this was the point.

Senator van Roggen: I have only looked at the bill very quickly and I may be wrong, but it seems to me that the only offences covered in the bill are mentioned in clause 6 on page 4; which reads:

> Except as provided for by the regulations, no manufacturer or distributor shall
>
> (a) export from Canada or deliver for export from Canada, or
>
> (b) send or convey, or deliver for the purpose of sending or conveying, from one province to another, . . .

Senator Neiman: That is right.

Senator van Roggen: That is one thing within federal jurisdiction. Then, sub-clause (2) of clause 7 reads:

> No person shall import into Canada a motor vehicle tire contrary to any regulation made under this section.

So it seems to me that the bill confines itself to saying that there shall be certain standards, and if you manufacture tires that are not up to these standards you cannot: one, import them into Canada; two, export them from Canada; and, three, move them from one province to another. But if you are not doing any of those things, you can do as you please. So it would seem to me to be constitutionally correct, and that is all this bill does, and it has no bearing on the retail aspect whatever, coming back to my question to the witness. Would that not appear to be what the bill does?

Senator Neiman: Yes. Well, this is a question I brought up with some of the members of the department, because I said, "There seems to be a hiatus in this. If you went to all this trouble to get the concurrence and the direction of the provinces, and they indicated this was the reason, to some extent, why this was all put together, the act does not really deal with things within the provinces themselves"—

Senator van Roggen: Which it could not do.

Senator Neiman: No; but I said, "You are not really dealing with tires, or cars, that are made in Ontario and sold in Ontario,"—

Senator van Roggen: Quite right.

Senator Neiman: —"so there is a large part of the market that is not being covered, and should be covered somewhere, if we are going to do this, and I thought that was the whole purpose of getting the concurrence of the provinces and working together." I said, "You are in fact going to have half an act here."

The wording is identical in the original act as it applies to cars, and now they are carrying it forward into tires. So that was the point that I was trying to raise with them. I said, "You seem to be only covering half your market, in spite of your great intentions of protecting everybody—all buyers of new cars. In fact, you are not doing that."

Senator van Roggen: Senator Forsey can correct me, but I think they have gone as far as they can go. Would you not think so?

Senator Forsey: Yes, I would think so. I hesitate, being a non-lawyer, to give an opinion on this, but that is how it seems to me; and furthermore, as I said before, I am puzzled by this talk of concurrent legislation by the provinces. I do not see how the provinces can confer any jurisdiction on the Parliament of Canada, or take any away. The only thing is, they might pass legislation, it seems to me, providing for administrative delegation that a particular dominion authority should be deemed to be a provincial authority for the purposes of this legislation. That, I think, could be done, as has been done arising out of the potato marketing case in Prince Edward Island, or the National Transportation Act.

Mr. Hopkins: Correct.

Senator Neiman: May I give you an example? This is the Ontario section, under the Highway Traffic Act, and this is an amendment to their act. It says:

> 63.—(1) No person who deals in motor vehicles shall sell or offer to sell a motor vehicle manufactured after the date this section comes into force that does not conform to the standards required under the *Motor Vehicle Safety Act* (Canada), and bears the National Safety Mark referred to therein.

Then it is followed by a penalty section.

Mr. Hopkins: That would be corollary legislation, not enabling legislation.

Senator Neiman: Not enabling? Yes, it is.

Senator Forsey: It is not enabling.

Mr. Hopkins: It is supporting legislation.

Senator Neiman: "Enabling"—that is the word the Transport officials used when I talked to them.

I have a British Columbia section here, which is worded slightly differently but it is quite the same in effect, I

think. However, I also had, as I say, this letter from Mr. Vaillancourt, of the Ministry of Transport, which says that Quebec has not promulgated what they call "complementary" legislation. I was not able to confirm whether the provinces of Alberta, Newfoundland and Saskatchewan have done so. Those are the other provinces that we still do not know about, and he said he was going to find out about that before they appear before this committee. I said that that information should be available.

The Chairman: That will be done next week. There will be a meeting of the committee next Thursday morning at which there will be officials of the Ministry of Transport and representatives of the Department of Justice.

Mr. Farmer: Mr. Chairman, may I ask a question here? That enabling legislation which you read referred to motor vehicles generally and not to tires specifically?

Senator Neiman: No, because this goes back to the original act.

Mr. Farmer: So there should be something somewhere about this which would take into account the after-market which is the problem area, as I see it, because the provinces have jurisdiction over the after-market, the sale of tires and the replacing of old tires on vehicles.

Senator van Roggen: I am sorry, but I do not think that is quite accurate, because the after-market is just as concerned with tires that are imported into Canada or transported across a provincial boundary as the original market, so that is so far as this act covers tires that are moved from one province to another, then it covers the after-market as well as the original one.

The only thing it does not cover is the situation where tires are manufactured in a province and then sold within that province. Since tires are something that are not usually made by very small companies—somebody operating in a back garage—and are normally made by national manufacturers and sold across the country, I think the act would be very effective. I am sure that if the provinces wanted to adopt its standards, to apply them to the few tires sold and manufactured within the province, then they may do so. In Ontario it will be important, as it will be in Nova Scotia, where they have the new Michelin plant. Saskatchewan, for example, might not need to adopt enabling legislation if it did not have any tire manufacturing. That would seem to me to be the essence of the situation.

On the need for this legislation, if I may digress for a moment, you said that only about 1 per cent of the accidents occurring are related to tire failure and that the vast majority of accidents are not related to the tire as much as to the misapplication of the tire and the type of vehicle concerned. You cannot do anything about that. If people are going to be fools, they are going to be fools. Could you then argue, since it is only a fraction of 1 per cent that is going to be affected, that it is unnecessary to set up the bureaucracy that is going to be established under this act? What is the need for it?

Mr. Farmer: I think it is important.

Senator van Roggen: Why do you say that?

Mr. Farmer: Well, I do not know how you would get down to deciding the value of a life. Last year 12,000 people were accidentally killed in Canada, 6,221 of these being on the highways. There were 230,000 injuries in traffic accidents.

Senator van Roggen: I understand that, but you are giving here total statistics. You said earlier that only 1 per cent of the accidents on the highways were caused by tire failure, and of that 1 per cent an even smaller percentage was caused by faulty tires. In other words, of that 1 per cent most were caused by faulty application of tires.

Mr. Farmer: Well, I do not know how it would work out. If it kills three people and injures 3,000 how are we to put a value on that? I think it is important that there should be standards. I do not know what type of bureaucracy we would be getting into through this.

Senator van Roggen: In fact, it may be very small.

Mr. Farmer: I would hope that that would be the case. The other side of the coin, the question of maintenance and proper application of these tires, must be dealt with provincially. Obviously, if the provinces get around to periodic motor vehicle inspection, then this could be done on the inspection line.

Senator van Roggen: We have in Vancouver compulsory inspection where these things are applied.

Senator Neiman: Mr. Chairman, one point that had occurred to me is the question as to why, instead of introducing a separate act, this was not simply introduced as an amendment to the original act because the original act says, "motor vehicle of a prescribed class and its components." It seems to me that if you compare this with the original act, the wording is identical, and I do not know if some day they will introduce legislation about mufflers or something and, in doing so, introduce a separate bill again. It seems to me it would be much better and more concise to bring in all these things as part of the original act. I did not see the necessity for this, and I asked about it again and Mr. Vaillancourt could not give me a direct answer. He said, "Well, we talked to our legal advisers." And I think he said something to the effect that, "It would be so similar that it would be difficult." That answer really did not make sense to me at all, and so I compared the wording of the act and of this bill, and it is the same.

There are a couple of areas where I think it does not make sense—for instance, as to what would be done if a tire was found to be defective and the importer or manufacturer was prosecuted successfully, but I cannot think of any circumstance where you might give the tire back to the offender.

The bill states that forfeiture may or may not be imposed, so, as I say, they have used certain wording here and in a couple of other areas which I thought was rather odd. That was another thing I thought should be questioned, in a sense.

As a matter of fact, I happened to notice that somebody in the other place brought in a private member's bill yesterday as an amendment to the Motor Vehicle Safety Act having to do with safety roll-bars or something like that. And there was even a private member's bill on tires introduced last week in the other place. I realize that those are bills that will probably die on the Order Paper, but I cannot see why all that cannot somehow be part of one

bill. It would seem to me to be a far simpler way of making any necessary changes.

Senator Forsey: Would it turn on the question as to whether or not a tire was a component of a motor vehicle?

Senator Neiman: No, because the new tires are regulated under the original act—by that, I mean the original tires.

Mr. Farmer: But isn't that only as an accessory to the new car or as part of the original car? I think this is the problem. It did not cover tires sold in the after-market.

Senator Neiman: I agree with that.

Mr. Farmer: And this is why the new bill is before you—to cover the after-market which, I think accounts for the biggest portion of tire sales in Canada. That could not be controlled through the original act which covered only the original manufacture of the vehicle with its tires, muffler and other components on it.

Senator Neiman: But your regulations are surely going to be the same. It would simply be concerned with a new tire put on the vehicle so, in fact, you end up with identical legislation.

Mr. Farmer: I think the problem was this, that there could be junk tires imported into Canada and it was indeed the problem. Tires that were rejected in Japan or in the United States because they did not meet the appropriate standards could be dumped in here and sold on the after-market as replacement tires. Then you had no control unless you brought in provincial legislation. But I think that this will now cover that situation because you are controlling the importation and the sale of tires in Canada.

Senator Benidickson: Mr. Chairman, the point I have in mind to raise may have been raised earlier. I was at a meeting of the Internal Economy Committee from 9.30. I come from the most north-westerly portion of Ontario, near the Manitoba border. A few years ago the Ontario Government introduced legislation prohibiting the use of studs in snow tires. This was violently opposed by people in northern and northwestern Ontario because of our snow problem there. The opposition was so great that, led by leading citizens including professional men in the community of Red Lake, more than 100 adamantly refused to comply with the law and invited prosecution in court. I cannot recollect the result, but that law is still in force.

I can imagine how inconvenient it is if studs on tires are desirable in a certain location in these northern climates and drivers normally travel into another province, such as to Winnipeg for their shopping or to the capital city or other large cities in the east of their own province, which are a thousand miles away. I would like to know whether the officials who have been dealing with this proposed legislation have had conversations regarding this with representatives of the provinces. It seems to involve inter-provincial traffic and, indeed, international traffic, and is, in my opinion, still a rather rankling situation in so far as those I know in the district of Red Lake, Kenora and centres of that nature are concerned.

My other point, Mr. Chairman. Is it proposed that we receive evidence from large, prominent retailers of tires as to the effects of this legislation? I appreciate that the aim is improved safety, but sometimes when unnecessary regulations are enacted it results in undue added expense to consumers. I wonder if this committee proposes to adduce evidence from those who are experienced in selling tires as to the added costs, if any, which will result to the consumer.

The Chairman: The answer is yes.

Senator Benidickson: Can anyone answer my first point? Have there been discussions at the interprovincial meetings in connection with the existence of the other statute referred to by Senator Neiman in her speech with respect to other components of automobiles? Has there been any discussion of uniformity in Canada with respect to studs in snow tires, or the possibility of exempting certain areas where snow is exceptionally heavy and where, perhaps, scientifically there would be good evidence that studs would be helpful and, indeed, necessary?

The Chairman: I think, Senator Benidickson, that many of these questions can be answered next week when the Transport officials appear together with representatives of the Department of Justice. They will advise as to this question of interprovincial and international arrangements.

I hope also that the officials will give us evidence on retreads, studs—you name it. Is that right, Senator Neiman?

Senator Neiman: Yes.

Senator McElman: Mr. Chairman, my question has to do with the jurisdictional aspect. As I understand this bill, it establishes a national safety mark, which is within the competence of Parliament and which will be known as the national tire safety mark. The bill also provides for the standard and quality of tires which may bear that mark. Is it not, then, simply a matter for the provinces to legislate that within their jurisdiction no new tire shall be manufactured or sold unless it carries the national safety mark? Is this not the essence of what we are discussing?

The Chairman: We discussed this 15 minutes ago, Senator McElman, and finally discovered that none of us can answer the question. We are therefore asking representatives of the Department of Justice to come forward, together with Transport officials. All we know is that tires are going to be made under certain conditions, of which we know nothing, and will bear this mark. What happens after that, the officials or the representatives of the Department of Justice must tell us. The question of jurisdiction was raised before.

Senator McElman: Then can I ask: Does the Parliament of Canada have jurisdiction to establish a national safety mark? I think it does, does it not?

Senator Forsey: Oh, yes.

Senator McElman: That is clear, is it?

Mr. Hopkins: Yes, and it has a broad jurisdiction under the heading Criminal Law, which makes these offences criminal, as Senator van Roggen pointed out earlier.

Senator McElman: The Parliament of Canada also has jurisdiction to establish the quality and nature of a product that can carry such a national safety mark, does it not?

Mr. Farmer: That is right.

Mr. Hopkins: I would like to hear the opinion of the representatives of the Department of Justice when they appear.

Senator McElman: I am sorry; I thought that these were questions that could be answered.

The Chairman: They cannot be answered by us.

Mr. Farmer: This is now provided in the act which covers the manufacture of new vehicles.

Senator McElman: This is my point; I thought it was.

Senator van Roggen: Senator McElman, yes, the federal government has jurisdiction over such marks. It can stipulate that tires bearing this mark must meet certain standards. That does not mean, however, that tires cannot be manufactured and not carry the mark, without meeting those standards. This act does not hinge on the mark. It introduces the mark as a simple method of identification, but it could also have stipulated a serial number.

This legislation really has no bearing on the subject of studs, as raised by Senator Benidickson, but simply regulates tires that are imported, exported or moved from province to province at certain standards. It is nothing more than that and provides for anything that falls between those, which is what gives it further jurisdiction.

Senator McElman: These are points to which I did not believe we needed further answers. The ultimate question I have at this meeting, or will have at a future meeting, is: Can we simply determine if each of the provinces either has or is prepared to introduce legislation that will provide that no new tire will be manufactured or sold within that province unless it bears the symbol of the national tire safety mark as provided by this legislation? Could that advice be given at the next meeting?

The Chairman: Yes. We are simply floundering at the moment, waiting for the officials. Earlier we had a great discussion with respect to the constitutionality of this legislation. That was stopped fast because the two principals in the argument agreed, so it was a unanimous opinion between those two and there was no dissenting opinion.

Senator Neiman: If I was instructed correctly by the officials with whom I spoke prior to introducing this bill, in spite of their plain words or the provisions in the previous act, they still intended to regulate the safety of all new tires at the manufacturing or importing level.

I went back to the original act and the minutes of your meeting to see if this question had been raised at that level. A Mr. Jacques Fortier, counsel to the then Department of Transport opened the proceedings that day with a description of the original bill. He said:

> The bill would provide for motor vehicles which comply with the safety standards applicable to such vehicles to have affixed on them the prescribed national safety mark before such vechcles may be sold in Canada—

I repeat "may be sold in Canada".

> —or exported from Canada, or transported between provinces.

It seems to me that he rather misinformed the committee—would you not agree—because he said "may be sold in Canada". He said, in effect, "they may be sold." He did not say just between provinces; he said "or transported between provinces!

Senator van Roggen: I do not think it covers the manufacture of a tire and the sale of that tire within a province.

Senator Forsey: With respect, it seems to me that under clause 5 you have what he was probably referring to, that:

> No manufacturer or distributor shall (a) apply to a motor vehicle tire of a prescribed class the national tire safety mark, . . . unless the tire complies with all safety standards . . .

The only thing you have here, it seems to me, that does not deal specifically with international or interprovincial trade is clause 5. It says that if you are going to have a national safety mark on this tire you have to meet certain restrictions, certain regulations, certain requirements. Even if he is just going to sell the tire in his own province, if he is going to put this mark on it, it has to be up to standard. Otherwise, as I understand it—I speak subject to correction by the members of the legal profession—it is simply a matter of import and export and interprovincial trade. But within the province he must not put this mark on the tire unless it meets safety standards.

Senator van Roggen: But he can manufacture a tire.

Senator Forsey: Yes. In fact, he can manufacture one made of chewing gum, if he wishes, provided he does not put this mark on it; and the chewing gum one cannot enter into international or interprovincial trade.

The Chairman: Are there any further questions or discussion on this bill at this moment? If not, we shall meet next Thursday morning, when we shall have with us officials from the Ministry of Transport to answer questions regarding regulations, and also representatives from the Justice Department. Despite the opinions expressed by Senators Forsey and van Roggen, we should await their opinions before reaching any decision.

Senator Forsey: I was merely questioning Senator van Roggen.

The Chairman: The committee will adjourn until next Thursday morning. The announcement of the time of day will be made before next Thursday morning. Is it agreed?

Hon. Senators: Agreed.

The Chairman: We wish to thank you, Mr. Farmer, for coming forward.

The committee adjourned.

Published under authority of the Senate by the Queen's Printer for Canada

Available from Information Canada, Ottawa, Canada

Government Publications

CAI YC 14
-T 54

SECOND SESSION—TWENTY-NINTH PARLIAMENT
1974

THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING SENATE COMMITTEE ON

TRANSPORT AND COMMUNICATIONS

The Honourable J. CAMPBELL HAIG, *Chairman*

LIBRARY
MAY - 9 1974
UNIVERSITY OF TORONTO

Issue No. 2

THURSDAY, APRIL 4, 1974

Second and final Proceedings on Bill S-3, intituled:

"Motor Vehicle Tire Safety Act"

REPORT OF THE COMMITTEE

(Witnesses:—See Minutes of Proceedings)

27416—1

STANDING SENATE COMMITTEE ON
TRANSPORT AND COMMUNICATIONS

The Hon. J. Campbell Haig, *Chairman.*

The Honourable Senators:

Blois	Lawson
Bourget	*Martin
Burchill	McElman
Denis	Molgat
Eudes	Petten
*Flynn	Prowse
Forsey	Riley
Fournier (*Madwaska-Restigouche*)	Smith
Graham	Sparrow
Haig	van Roggen
Langlois	Welch—(20)

*Ex officio

(Quorum 5)

Order of Reference

Extract from the Minutes of the Proceedings of the Senate, March 26, 1974.

"Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Neiman, seconded by the Honourable Senator Rowe, for the second reading of the Bill S-3, intituled: "An Act respecting the use of the national safety marks in relation to motor vehicle tires and to provide for safety standards for certain motor vehicle tires imported into or exported from Canada or sent or conveyed from one province to another".

After debate, and—
The question being put on the motion, it was—
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Neiman moved, seconded by the Honourable Senator Hicks, that the Bill be referred to the Standing Senate Committee on Transport and Communications.

The question being put on the motion, it was—
Resolved in the affirmative."

Robert Fortier,
Clerk of the Senate.

Minutes of Proceedings

Thursday, April 4, 1974.

Pursuant to adjournment and notice, the Standing Senate Committee on Transport and Communications met this day at 10.00 a.m. to further consider Bill S-3, intituled: "Motor Vehicle Tire Safety Act".

Present: The Honourable Senators Haig (*Chairman*), Blois, Flynn, Forsey, Langlois, Martin, McElman, Petten, Riley, Smith and van Roggen. (11)

Present, but not of the Committee: The Honourable Senators Neiman and McGrand. (2)

In attendance: Mr. E. R. Hopkins, Law Clerk and Parliamentary Counsel.

WITNESSES:

Ministry of Transport:

Dr. Gordon Campbell,
Director of Road and Motor
Vehicle Traffic Safety Branch.

Mr. J. T. Gray,
Senior Ministry Executive—Legal.

Rubber Association of Canada:

Mr. Kenneth Graydon,
President, and other Association Officers.

After discussion and upon Motion of the Honourable Senator Langlois, it was Resolved to report the said Bill without amendment.

At 12.30 p.m. the Committee adjourned to the call of the Chairman.

ATTEST:

Mrs. Aline Pritchard,
Clerk of the Committee.

Reports of the Committee

Thursday, April 4, 1974.

The Standing Senate Committee on Transport and Communications to which was referred Bill S-3, intituled: "An Act respecting the use of national safety marks in relation to motor vehicle tires and to provide for safety standards for certain motor vehicle tires imported into or exported from Canada or sent or conveyed from one province to another", has, in obedience to the order of reference of Tuesday, March 26, 1974, examined the said Bill and now reports the same without amendment.

Respectfully submitted.

J. Campbell Haig,
Chairman

The Standing Senate Committee on Transport and Communications

Evidence

Ottawa, Thursday, April 4, 1974.

The Standing Senate Committee on Transport and Communications, to which was referred Bill S-3, respecting the use of national safety marks in relation to motor vehicle tires and to provide for safety standards for certain motor vehicle tires imported into or exported from Canada or sent or conveyed from one province to another, met this day at 10 a.m. to give further consideration to the bill.

Senator J. Campbell Haig (*Chairman*) in the Chair.

The Chairman: Honourable senators, we held a meeting last week and certain questions remained unanswered, to which we expect to have the answers today. The first person who will speak to us will be Dr. Gordon Campbell, Director of Roads Safety, Ministry of Transport. Dr. Campbell, I might remind you to speak a little louder than normal if you intend to project slides.

Dr. G. D. Campbell, Director, Road and Motor Vehicle Traffic Safety Branch, Ministry of Transport: Honourable senators, I am here representing the Ministry of Transport. I would like to introduce my colleagues who are with me this morning in the hope that we can answer all your questions with respect to Bill S-3. On my right is Mr. John Gray, the Senior Ministry Executive, Legal Branch, Ministry of Transport, representing the Department of Justice. On the left-hand wall is Mr. Jean-Paul Vaillancourt, Assistant Director, Motor Vehicle Programs; Mr. E. R. Welbourne, Chief, Vehicle Systems Division, Countermeasures Development, Road and Motor Vehicle Traffic Safety Branch; Mr. R. Solman, Standards Engineer, who will be responsible for drafting regulations; and Mr. Scharbach, our Tire Compliance Auditor.

With your permission, Mr. Chairman, I would like to make a presentation using slides.

The Chairman: Yes; thank you very much.

Dr. Campbell: The object of this presentation is to endeavour to give you some indication of the seriousness of the road safety problem in Canada and the responsibilities of the Ministry of Transport in connection with this problem. I will then explain how the proposed Motor Vehicle Tire Safety Act fits into the scheme of things. I shall, therefore, run very quickly through these slides and if my explanation is unclear, stop me and I will elaborate.

This initial slide shows the numbers of transportation fatalities in Canada during 1971, which was 6,139. Of those, 5,567, the vast majority, were killed in road accidents; air accidents accounts for approximately 170; rail somewhat less than 100; boating and shipping accidents, just over 300.

So the road accident problem dominates our transportation safety picture in Canada. As to the breakdown, this large segment represents pedestrians, cyclists and motor cyclists. The smallest piece of the pie represents railway grade crossing accidents, and this large portion represents occupants of motor vehicles—drivers and passengers in automobiles, trucks and buses.

In Canada over the past several years there have been between 5,000 and 5,500 people killed per year in motor vehicle accidents. Those figures are demonstrated in this chart.

In 1950 the figure was somewhat over 2,000. It rose rather abruptly in the early part of the 1950s, levelled off somewhat in the mid-fifties until 1961, and again rose very abruptly in the early sixties. If again levelled off, and now has started to climb once more. These are the number of persons killed in road accidents in Canada.

We attribute this levelling off in the late 1950s to the massive provincial highway construction program coupled with the Trans-Canada Highway construction program. During this period and immediately preceding it all of the highway system of Canada was reconstructed. As a result of the better roads there was a decrease in the growth rate of accidents.

As the emphasis on new road construction diminished somewhat, the number of fatalities again started to rise abruptly, until 1966. At that point Parliament held hearings on road safety because of the great public outcry and concern about the road accident situation. As a result of those hearings, motor vehicle design was modified under the Motor Vehicle Safety Act and because of other government action.

The change in motor vehicle design, coupled with other measures, resulted in a levelling off in the number of road accidents and fatalities for a period of about five years.

Events are now catching up with us. With the further increase in travel, accidents and fatalities are once again increasing, and it is apparent that additional measures are necessary.

Senator McElman: Mr. Chairman, has Dr. Campbell a similar graph comparing those figures with the increase in vehicles on our highways as a percentage?

Dr. Campbell: I am now showing the number of persons killed per 100 million vehicle miles of travel on our road system. The figure has been decreasing through time. If we look back to about 1930 we find that the rate was somewhere in the order of 25 to 30 persons. So it has been coming down. Travel is becoming relatively safer. There have been periods when the rate increased, and it could

increase again. As we approach zero, of course, the problem becomes much more difficult.

Driving down the rate is a major problem. Indications are that the rate has been increasing in the last two years.

To put the rate into perspective, our rate in Canada of persons killed per 100 million motor vehicle miles of travel is in the order of 6.5, whereas in the United States it is less than five—4.5.

Travel is relatively safer in the United States. In Europe the rate for France and Italy, for example, is in the order of 13 to 15 fatalities per 100 million vehicle miles.

Therefore we are not the worst and we are not the best. In comparison with the United States there are strong indications that there is scope for improving safety on our roads.

I have one other graph which indicates a trend in the problem. During the period 1967 to 1971 the number of pedestrians killed actually decreased somewhat, the number of vehicle occupants killed remained approximately the same, and the number of motorcycle and bicycle fatalities increased very substantially—which is a matter of considerable concern to safety officials in Canada.

In these few graphs and statistics I have tried to give you a picture of the seriousness of the road safety problem. It is very bad and is getting worse, and additional measures are necessary.

We estimate at the present time that approximately $250 million per year is spent on road safety programs in Canada. With regard to vehicle engineering, the cost of providing additional safety features in motor vehicles is in the order of about $100 million per year. Consumers pay for this when purchasing new cars.

In connection with road safety measures—guard rails, removal of roadside obstacles, correction of hazardous locations, and so forth—the provinces are spending in the order of from $75 million to $100 million per year.

For drive education, provincial expenditure is in the order of $10 million; for enforcement of traffic laws, $50 million; for research and development, $2 million.

So we are spending in Canada approximately $225 million per year on road safety programs at the present time.

To put this in perspective, we are spending close to $5 billion per year on road construction and maintenance, and in the order of $12 billion on road transport in Canada.

Therefore road safety expenditure is substantial for current road safety programs, but relatively small in relationship to total road investment.

The Ministry of Transport's objectives in road safety are to reduce the number of road casualties—or, expressed in another way, to reduce the number of collisions, injuries, deaths, health impairment resulting from motor vehicle use, and property damage occurring on the nation's road and street systems. Hopefully all our activities are related directly to that objective.

Our specific programs in the Ministry of Transport are indicated on this slide. First, we have an assigned responsibility for co-ordinating federal government activities related to road safety. There are perhaps 15 different government departments and agencies with programs related to road safety.

Currently, we have a responsibility for issuing and enforcing safety standards for new motor vehicles under the federal Motor Vehicle Safety Act, and the provinces have responsibility for the safety of vehicles in use through their provincial highway traffic and motor vehicle acts. The provinces have also responsibility for the safety of replacement components for motor vehicles.

The third part of our program is international liaison, which is becoming increasingly important. The motor vehicle industry is an international industry and international standards are required in order that there are no artificial barriers to trade.

We are working very closely with the United Nations, the EEC and OECD to develop international motor vehicle safety standards which can be adopted in Canada. In addition, we are working with other agencies, such as NATO, in exchanging road safety program information.

We have also a road safety countermeasure development program in the Ministry of Transport which is a program of very applied research to develop practical measures which can be implemented by federal, provincial and municipal governments to bring about reductions in road casualties.

Our organization in the ministry, the branch I represent, is basically one of countermeasure development, which is very applied research by a small group of engineers, economists, mathematicians and psychologists to consider various measures which can be implemented to reduce road casualties.

Secondly, we have the motor vehicle program where we issue standards and enforce them, buy and test components, investigate accidents, and so forth. We have administrative support and a new section to introduce other road safety measures within the federal government.

The standards issued at the present time under the Motor Vehicle Safety Act apply to buses, motorcycles, passenger cars, trucks and trailers. There are three basic groups of standards which relate to the total new motor vehicle, those being: crash avoidance standards, such as brakes, lights and tires on new motor vehicles which may assist in avoiding crashes; crash worthiness standards, such as the glass, seat belts, interior padding, inflammability of materials, so that if a vehicle is involved in a collision the odds of survival are enhanced; and, finally, a group of standards relating to emissions, such as exhaust emissions, evaporative emissions and noise emission from new motor vehicles.

The act is applicable to vehicles manufactured in Canada or imported into Canada. This slide merely indicates that there are about one and a half million motor vehicles manufactured in Canada and approximately 600,000 motor vehicles imported into Canada each year. New registrations are in the order of 1 million a year. The motor vehicle manufacturing industry is quite large in Canada, numbering at least 1,200 companies. This would include the large automobile manufacturers such as General Motors, Chrysler, American Motors, the large truck manufacturers such as International Harvester, White, as well as the trailer manufacturers—and there are trailer manufacturing companies in virtually every city of Cana-

da—snowmobile manufacturers and truck body builders who take chassis and convert them into commercial vehicles. So we are dealing with a very large industry under the Motor Vehicle Safety Act.

Senator van Roggen: That figure of 1,200-and-some-odd does not include companies which manufacture components?

Dr. Campbell: No, it does not. The Motor Vehicle Safety Act also contains provision for administering and controlling defect notification, the so-called recall campaign, where the manufacturer is aware of safety-related defects in a vehicle. When that occurs the manufacturer must give notice to the Ministry of Transport and to the owners of the vehicles concerned. In 1972 there were 151 campaigns to correct safety defects involving some 850,000 vehicles.

The other side of our program in the ministry consists of applied research to develop cost-effective programs which can be implemented to reduce road accidents. In this respect we are working in the human area of impaired driving. Drinking-and-driving still has to be the number one problem. We are also working on new safety campaign techniques to provide the public with information on seat belt usage, and seat belt usage still has to be the most potentially effective device available for reducing casualties. If everyone in Canada wore seat belts when driving in a motor vehicle, we could immediately reduce the number of fatalities by at least one-third to one-half.

In the area of vehicles, we are working on defrosting and defogging mechanisms, headlight systems—and there will be improved headlights in the near future—and vehicle maintenance. In the area of roads, we are working on intersection behaviour. At least half of all urban accidents occur at intersections. We are also working on roadside obstacles and traffic sign design. We are doing what we can to introduce symbolization into all signs in Canada.

We have been working very closely with the provincial governments in all of these areas. In February of this year the Minister of Transport, the Honourable Jean Marchand, along with his ten provincial counterparts, adopted 1979 goals for road safety in Canada, with a commitment to a program to meet those goals. Those goals involve complete documentation of all existing road safety programs in this country. Because they are not exactly the same from province to province, each jurisdiction can learn from the others. That joint federal-provincial program is designed to progressively reduce the fatality rate 100 million vehicle-miles in Canada by 15 per cent over the next five years. As I said earlier, the number of fatalities is increasing. Unless something is done, we are predicting an increase in the number of road fatalities, as indicated by this top red bar. In other words, within the next five years in excess of 7,000 persons per year could be killed on Canadian roads. The goal is to prevent any increase. If we are able to achieve that goal, we will be saving in the order of 1,000 lives a year five years from now. That alone is a very big task, but the federal and provincial governments are committed to it, and I believe it can be accomplished.

It can be accomplished through a number of available programs, such as increased seat belt usage, either by persuasion or legislation; reducing alcohol induced impaired driving; correcting hazardous road locations; additional safety standards, particularly for trucks, buses, school buses; improved vehicle maintenance; extension and improvement in driver education, and increased police presence.

We in the ministry are very concerned that the average automobile owner does not even read his onwer's manual and follow the basic instructions on having his vehicle serviced.

These are the areas in which something can be done today to bring about the reduction in casualties. That is the background against which we consider this motor vehicle tire safety bill. There are several reasons why this bill is being advanced by the ministry. The first is Canada's serious road casualties problem, which I have tried to describe. Secondly, there is the improvement of tires for greater safe vehicle operation—there is an indication that replacement tires are inferior, or have been inferior, to original equipment tires provided on new motor vehicles. Thirdly, Bill S-3 would provide the authority to prevent the importation of tires which may be rejected in other countries. Fourthly, to overcome problems of trying to control the safety standards on tires at the point of retail sales.

Also, of course, the bill provides increased scope for action under the Motor Vehicle Safety Standards Program, one more weapon in the arsenal to combat our road safety problem.

The bill would provide minimum tire safety requirements by regulation: first, for all new tires manufactured in Canada; secondly, for all tires to be imported into Canada. In other words, the authority would be there to prevent the importation of recapped tires, used tires, regrooved tires, and so on, of questionable safety. The bill as drafted would apply to tires of all classes of road vehicles—automobiles, trucks, buses, motor cycles, trailers, and so on. The bill contains a provision for defect notification or recall of tires when safety defects are known.

Our colleagues from the industry will, no doubt, elaborate more on the industry itself, its size and scope. However, I should like to indicate that there are approximately 20 million new tires sold per year in Canada, comprised of about six million provided as original equipment on new motor vehicles and 14 million as new tires sold in the after-market to replace original equipment tires. We do not know how many recapped tires or used tires are sold in Canada, but the number is comparatively small. In Canada there are eight companies manufacturing and 13 plants.

I should like to indicate the fluidity of the situation with respect to standards. Under the Motor Vehicle Safety Act there are approximately 55 individual standards related to glass, steering column, padding, and so on. In the period 1971-73 these were amended 43 times. We are continually improving the standards as additional information becomes available, and as industry has the capability to adapt to the changes. At present there are two tire standards in the Motor Vehicle Safety Act, and they were amended three times in the period 1971-73. We estimate that the number of standards under the proposed bill would be three, and that they would probably be amended at least twice a year. This is one of the reasons why the bill is written so that the specific standards would be covered under regulation rather than in the legislation itself.

We have been testing tires. We have tested original equipment tires over the past two years; that is, tires fitted as original equipment on new motor vehicles. We have also tested new tires sold in the after-market through the retail level. All the original equipment tires tested passed the standards. Over the past year, 1,240 replacement tires were tested, and there were 22 out of 396 types of tires that failed. They could have failed for various reasons, such as improper marking and so on. By "failure" I mean they would not have met all the provisions of the new motor vehicle requirements.

Senator van Roggen: You refer to 22 types of tires. Is that 22 individual tires or 22 different kinds of tires?

Dr. Campbell: There were 1,240 individual tires, and they would be in groups. We tested groups of supposedly identical tires. There would be 418 sets of tires tested. In other words, there would be approximately three tires per set tested.

Senator van Roggen: But they would not all be different?

Dr. Campbell: This would be one make of tire. Of the 418 sets of tires, 22 failed to meet our new motor vehicle standards and 396 met them.

Senator van Roggen: I am sorry, but I am still not quite clear. I would like to know if there were 22 types of tires that failed or 22 tires that failed.

Dr. Campbell: Twenty-two types.

Senator van Roggen: So all of the tires of that type would not come up to standard?

Dr. Campbell: As a type, as a group, they would not.

Senator van Roggen: That type of tire?

Dr. Campbell: It did not meet our standards.

Tires are related to accidents, but I do not want to leave the impression that this is one of the major causes. I have said that our number one problem is drinking-and-driving, and our number one countermeasure is seat belts. However, tires are related to road accidents. We estimate that between 5 and 20 per cent of accidents involve mechanical defects in vehicles, such as something wrong with the steering, the brakes or the tires. The most frequent mechanical defect in the vehicle relates to the brakes. The second most frequent defect in vehicles relates to the tires. Between 10 and 20 per cent of causative or contributory defects are tire failures. Between 0.5 and 2.5 per cent of accidents are associated with tire failures. In other words, a tire failure may have been a contributing, or probably was a contributing, factor to the accident.

There are various tire types—bias ply, bias belted and radial. One of our requirements in the regulations is the labelling of tires. We stress this. There would be labelling of consumer safety information—tread, life, traction, speed, construction, size; these are various things that could be included in the labelling, because there are different types of tires. One of the reasons for that labelling is the hazard of mixing tires. I am sure our colleagues from the industry will stress this point in their presentation this morning. The mixing of these various types of tires can contribute to accidents. The main contributors related to accidents would be overloading of the tires, mixing of the tires, under-inflation and excessive wear.

The existing tire regulations under the Motor Vehicle Safety Act, related to equipment on new motor vehicles, include performance requirements, the strength of the tire, the resistance to bead unseating from the rim, the high speed performance of the tire, and endurance. These tests are performed on a tire testing machine where the tires are rotated against the wheel, the steel drum, and it results in a heat build-up which will simulate road operating conditions, but it will be quite severe. These are the main performance requirements in existing tire standards, plus labelling.

The future performance standards relate to traction or tread, which I believe are safety related, and further labelling requirements to assist the consumer to select the proper tires for his need.

Mr. Chairman, I believe that is the end of my formal presentation and I will be prepared to answer questions.

The Chairman: Honourable senators, the meeting is now open to questions to Dr. Gordon Campbell, the Director of Roads Safety. Are there any questions? Is there anything further you wish to say, Dr. Campbell?

Dr. Campbell: No, Mr. Chairman. I understand the industry is prepared to speak and I am most anxious to hear their presentation.

The Chairman: That is the understatement of the day.

Senator van Roggen: I have one or two questions, before the other witnesses come up. This bill will give you the power to pass on all tires imported into Canada, of whatever nature, and on all tires going from one province to another; it will give you the power to pass on tires manufactured anywhere in Canada, if they are to carry your seal or trade mark as proposed in the bill. It will not give you power, constitutionally, I would think, to deal with tires manufactured in a province and sold within that province. Are the provinces contemplating parallel regulations?

Dr. Campbell: Your statement is quite correct, sir. We do not believe that complementary provincial legislation would be required in this case because of the nature of the industry. I indicated that there is a limited number of manufacturers and tire plants in Canada. Perhaps the gentlemen from the industry could elaborate on this. I do not believe they could segregate production as between interprovincial and extraprovincial.

I am sure they would probably mark every tire, and once the tire is marked with the trade mark then we would have control.

The Chairman: Thank you, Dr. Campbell.

Honourable senators, we will hear now from the Rubber Association of Canada, the Presidenr, Mr. Kenneth R. Graydon.

Before you make your presentation, Mr. Graydon, and in deference to Senator McElman will you kindly explain this little dingus we have?

Mr. Kenneth R. Graydon, President, The Rubber Association of Canada: Mr. Chairman and honourable senators, this is a tread depth gauge which the Rubber Association has made available to consumers. It merely enables you to measure the amount of tread on your tire at any one time.

As you probably know, tires now have tread wear bar indicators on them at a depth of 2/32 of an inch. That is the depth at which the industry says you should change your tire because it is becoming unsafe. This little gauge is just a helpful reminder to automobile owners that they should be conscious of the amount of tread they have on the tires.

The Chairman: Thank you very much.

Mr. Graydon: Mr. Chairman and honourable senators, I would like to thank you for the opportunity you have afforded us of coming here and speaking to the bill. We have a large delegation. I will lead off by making some general comments. Then I will call on two other delegates to comment more specifically on certain aspects of the bill. Then we shall be happy to answer your questions and any member of our group may wish to comment and help you to understand the bill and the industry itself.

First of all, I should say that we are here to support the bill and to support the intent of the bill and the main thrust of it, completely. We do have a number of small points, not necessarily unimportant, dealing with clarification of the wording. These are points we feel should be examined so that we can be assured that the intent is revealed and carried out when the bill becomes law.

However, in saying that we support the bill, we do have one major area of concern. We feel that in one aspect the bill may be going too far. The recall system proposed in the bill raises a question in our minds as to whether or not the situation really requires that kind of approach, to control and cure a problem that, to the best of our information and supported somewhat by Dr. Campbell's statistics, is relatively small.

Tires are accountable for—if even in a related fashion—about one per cent of accidents—one-half to 2.5 per cent. Most of those accidents, we believe from experience, are caused not by defective new tires but by worn tires, tires with excess wear or improper inflation.

The potential risk involved, and the incidence of the problem, raises a question in our minds as to whether it is really necessary to thrust upon the industry the obligation to establish a recall system. If it is so necessary, then there are some practical problems in making the system effective. We are aware that such a system exists in the United States. There is a real problem in being able to be assured that the dealer and the customers will carry out their required part of the record keeping system. It is an administrative problem, and the real question in our minds is whether or not a situation related to tire accidents justifies this kind of system. We will speak to that further and answer some of your questions and elaborate on them.

The Chairman: Excuse me, Mr. Graydon. You have mentioned that you disagree with the recall system. Where do you find that in the bill? Would that not be in the regulations?

Mr. Graydon: Provision is made in the bill, under clauses 4 and 8, for the establishment and notification of defects. I am referring to it in general language as "a recall system."

The Chairman: Honourable senators, it is on page 3.

Mr. Graydon: That is right. It is in Part I, clause 4(1)(e).

There are two other points relevant to this comment. If such a system is necessary, whatever cost is involved in establishing it and maintaining it will inevitably be passed on to the consumer and become part of the tire price, and it just seems to us to be an unnecessary extra cost at a time when costs of all materials, and everything else, are going up at an astronomical rate.

There is a difference in value between tires and, for example, a motor vehicle, and if such a recall system were to be established, the difficulty we foresee in having it become effective is, in part, the consumer question I referred to earlier, namely, that the consumer in tires will simply not have the same interest in ensuring that he registers—or whatever is required of him and the dealer—as the consumer in motor vehicles, where his interest is naturally much larger because much more is at stake in total dollars.

Mr. Chairman, those are the main points we want to leave with you at this stage.

Now I would like to call on Mr. Jack Goudie to run briefly over some of the technical points and to bring to your attention our views with respect to some of the wording in the bill.

Thank you, Mr. Chairman.

The Chairman: Thank you very much, Mr. Graydon.

We will now hear from Mr. Jack J. Goudie, Technical Manager of Firestone Tire & Rubber Co. of Canada Ltd.

Mr. Jack J. Goudie, Technical Manager, Firestone Tire & Rubber Company of Canada Ltd.: Thank you, Mr. Chairman and honourable senators. I will try to be as brief as possible in order to leave time for additional presentations.

I wish to cover just two or three brief points relating to the definitions contained in the first part of the bill. It could be that some of these points will be ironed out in the regulations, and if that is the case we can pass over them fairly quickly. But just to give you an example of the type of thing we would like to have the opportunity to address ourselves to, we felt, for example, that in the definition of "motor vehicle" the term "roads" should be expanded to include public streets, roads and highways so that it would be all encompassing. Perhaps that is a minor point.

Again the definition of "safety standards" contains the phrase "design, construction or functioning of motor vehicle tires". We feel that the standard should be a performance standard and not a standard related to design or construction, as we would define those words. Perhaps there is some need in the motor vehicle industry to require certain design features because of safety objectives, but we feel that the design and construction of a tire, as we would define those words, are such that they should be left to the manufacturer, and that the performance of the tire should be judged rather than that certain components or certain arrangements of materials and that sort of thing should be specified and complied with.

We also felt, Mr. Chairman, that the definition of the word "tire" should be expanded to refer to a "new, pneumatic tire," as being the general category which we are interested in here.

The Chairman: You mean just add those words?

Mr. Goudie: Right. Basically, that is the extent of my remarks at the moment. Perhaps there are other points that could be raised during the question session.

Senator van Roggen: If you add "new, pneumatic tire", will that not leave a gaping hole in so far as imported retreads and regrooved tires and so on are concerned?

Mr. Goudie: Yes. Perhaps the question is whether it is the intent to cover these categories of tires.

Senator van Roggen: Surely one of the most important aspects is to prevent other countries' rejects from coming into Canada as retreaded tires, which would not pass our standards for new tires.

Mr. Goudie: As I understand the concept of the federal regulation, senator, the standard is established on the new tire. Now, whether the retreaded tire at its point of sale would come within the definition of "new tire" is a point which could be debated, but again, just to make the comment, is it a new tire if it is reconditioned and offered for sale with a full tread?

Senator van Roggen: What you are suggesting would create a loophole, and I do not see the need for it. With respect to your suggestion to add the words "new, pneumatic" before the word "tire", is there a significant number of non-pneumatic tires?

Mr. Goudie: I would say no.

Senator van Roggen: Then if you just use the word "tire" without the adjective, how does that bother you?

Mr. Goudie: There are solid tires being used other than on highways, but, if the presumption is that the standard will confine itself to "highways" and to the area of highway useage, then perhaps it is an academic point.

Senator van Roggen: Mr. Goudie, I was impressed with your point about the definition of "safety standards" including the words "design, construction or functioning", et cetera. It seems to me that the person in the trade should be able to design anything he likes so long as it lives up to the standards. Is any further evidence going to be given on that point?

Mr. Goudie: I am not so sure that it is. Again, we are talking about a definition of terms, and we interpret the words "design" and "construction" as the choice we make with respect to, for example, the appearance of a tread pattern or the ply configuration—whether it be radial, bias or bias-belted, or whether it contains rayon, nylon, polyester, glass or steel—and the various other associated choices that the tire company would have as to how it specifies that that tire will be designed and constructed. That is really what I was getting at. I was trying to make the point that the latitude for these choices should still be available and that the regulations should not specify a design or construction, but should merely specify the performance standard.

Senator van Roggen: Yes, that point impresses me. I do not think, for example, that the government should by regulation dictate the colour of tire. I know tires come only in black, like the old Fords, but, if you could produce a pink tire, that would be your business so long as the tire was up to standard.

You say, however, that the tread design should be your choice. I suppose you might want to put a different tread design on for purposes of new advertising. Perhaps the answer of the department would be that that particular tread design is an unsafe design, but then, of course, that would get caught by the performance standard. That is your point?

Mr. Goudie: Yes. That is correct.

Senator van Roggen: I think that of these two or three points that you have raised, that is the one that impresses me the most. We have to see what the departmental people have to say about that. I think we can come back to it. Thank you.

Senator Riley: I would like Mr. Goudie, if he would, to explain again what his suggestions might be in respect to the extension of the interpretation of the word "motor vehicle."

Mr. Goudie: Again, perhaps this is the least significant of the points I brought up, but the extension of the word "road" to include public streets, roads and highways, in a sense, to my way of thinking, would broaden the interpretation. It adds a little specificity, or is a little more specific, in that we are talking about any kind of highway use, and perhaps the word "road" would be sufficient.

Senator Riley: I believe it would be all-inclusive; "highway" includes "a public street."

Mr. Goudie: This is not a major point.

The Chairman: Are there any further questions of Mr. Goudie?

Senator Riley: I would like to ask another question. In respect to the suggestion that the words "new pneumatic" be added to the interpretation of the word "tire", there are, I believe, some interprovincial operations in respect to retreaded tires, are there not?

Mr. Goudie: I would certainly think so, yes. That is, moving of tires from one province to another?

Senator Riley: Yes, for retreading purposes. Well now, are you suggesting that it would eliminate the regulation of these retreads that move from province to province to have the retreading done?

Mr. Goudie: Well, here again I do not believe that the intent of our comment is to prohibit the federal government from involving itself in the retread legislation. Really, I think what we are getting at is the new versus the used tire—that is, a tire which has been in service and is, for example, half worn. We would not necessarily have to meet the same standards as a new tire—that is, a new tire standard; but, here again, this is the type of wording that we were looking at: "new" versus "used," rather than "new" versus "retread," and the possibility that a retreaded tire, after it had been retreaded, would come under this act, certainly, I think, should be left open. There is some question as to whether it would be used or not, at the federal level, I understand, but I believe the intent is to have that door open, if I am not mistaken.

The Chairman: Any further questions?

Senator Riley: No, thank you.

The Chairman: Thank you very much, Mr. Goudie.

Mr. Graydon, who is your next witness?

Mr. Graydon: Mr. Charles E. Clarke.

The Chairman: Mr. Clarke is vice-president and general counsel, Goodyear Tire and Rubber Company of Canada Ltd.

Please proceed, Mr. Clarke.

Mr. Charles E. Clarke, Vice-President and General Counsel, Goodyear Tire & Rubber Company of Canada Ltd.: Thank you, Mr. Chairman.

Honourable senators, I have just a few items and these are with respect to various wordings in the act, and the first is in clause 3.

The indication of the symbol which is to be the national trade mark is so portrayed in the bill that the quotation marks would appear to be part of the symbol. We question whether that is the intention, and perhaps the quotation marks, really, should be of the same type as the text. We feel, unless the director indicates otherwise, that the intention is merely to have the letter C with the T inside it.

My second comment, Mr. Chairman, is in relation to clause 4(1)(d). The section provides that it may be required as a condition of the use of the trade mark that certain items of information be indicated, one of which is the date of manufacture of the tire. I question the use of the word "date" in the sense that that, I believe, could be interpreted as requiring the specific day, as for example, April 4, 1974. In fact, the Motor Vehicle Safety Act refers to the motor vehicle showing the month and year of manufacture. The practice in the rubber industry, and it exists under regulation 109 under the Motor Vehicle Safety Act for tires, is to indicate by a code the week and year of manufacture. My suggestion here would be that if this is a valid concern, perhaps, instead of specifying the date of manufacture, it should call for an indication of the period of manufacture, as may be prescribed.

Senator van Roggen: Well, what if we put "week and year" right into the act?

Mr. Clarke: That would solve my problem immediately. The only question that I see open is whether other methods of defining the time of manufacture may be based on a period of time which could be modified in the regulations with a more general statement.

Senator Neiman: "Time of manufacture"?

Senator Flynn: "Time."

Senator van Roggen: "Time." Maybe you should then go further and say "the time of manufacture of the tire as specified in the regulations."

Senator Flynn: The regulations would specify it.

Senator van Roggen: Yes.

Senator Neiman: All right.

The Chairman: You see, a lot of this, Mr. Clarke, is on the basis that there are going to be regulations made. Now, it could be that your question on clause 3 could be changed, under regulations, to put the big C and the T without those two little marks, and the same on the question of the date. We could put "period". A monthly period, or—

Senator Flynn: "The Time."

The Chairman: If that is what you really want. Is that right?

Senator Neiman: I think, Mr. Chairman, perhaps Dr. Campbell would like us to use something akin to the similar regulations in the parent act. Would that meet it? We could check that to see what the wording is. I believe the wording is the same in the parent act. I do not have it with me. I believe it says in the act itself, the date of manufacture—

Mr. Clarke: The parent act, meaning the Motor Vehicle Safety Act? It calls for the manufacturer of the motor vehicle to identify the month and year of manufacture, in the Motor Vehicle Safety Act. That is provided in the act itself, and this clause 4(1)(d) is a somewhat different structure from section 4(1)(d) in the Motor Vehicle Safety Act. I think necessarily so, because of the nature of the information that Dr. Campbell feels needs to be prescribed, following the type of information set out in regulation 109 under the Motor Vehicle Safety Act.

The Chairman: Thank you very much.

Mr. Clarke: I will pass on now to the next point, if I may, Mr. Chairman.

Clause 4(1)(e) requires the establishment and maintenance of a record system, and if that is deemed to be necessary under the act, it appears to me, as I read it, that it could be interpreted to require that we record individual tires as they move through the distribution system, because it speaks of us having a system to record any person who has purchased a tire manufactured by him from him. The chain of distribution is often to a large dealer or distributor, and then to a smaller dealer or service station, and ultimately to the consumer. My concern here is that I presume the intention is to provide a record system for the ultimate user, or the consumer of the tire, so that he is the one who can be notified. I think there is no concern of notifying dealers in the distribution system on an individual tire record basis. If there is a problem with a tire we can get at it on a general basis of all tires of a particular time of manufacture. So I suggest that perhaps this is not reflecting what is practical, if my interpretation is correct, and perhaps it should be referring to recording any person who has purchased a tire for use, rather than resale.

A similar situation applies in clause 7(1)(b)(ii), which deals with the record keeping system for the importer.

Clause 8(1)(a) and (b), on page 6, calls for notification to the person who purchased the tire from him, and again I suggest that perhaps this is not in keeping with the concept of the consumer being recorded. Although (b) deals with any subsequent purchaser of that tire from the manufacturer, I presume the intent is to have the facility of the record for the ultimate consumer to be identified and notified, but not that each person down the chain of distribution must be notified, that is, everyone who has ever owned the tire.

Clause 8(2)(b) refers to the notice containing a description of the defect, and an evaluation of the safety risk, and

that there must be a statement of the action taken to eliminate it. I am not sure whether that means to eliminate the defect or the safety risk. The choice of the word "eliminate" causes a question mark in my mind. This is a change from the parent act, the Motor Vehicle Safety Act, where the word used was "correct" and required a notice of the action taken "to correct" the defect. I suggest "eliminate" is perhaps stronger than necessary and may leave no room for correcting. Other possible words might be "remedy" or "rectify."

I have no further comments at this time.

The Chairman: Who is next, Mr. Graydon?

Mr. Graydon: We have no further spokesman at this time, Mr. Chairman.

I would like to add one further comment before offering ourselves for discussion. It is our estimate that the industry could comply with the act within a period of six months after final regulations have been issued. That is to say that we could comply with the manufacturing regulation. If we are required to establish the recall system, that would take longer, but how much longer we cannot say until we see the regulations to determine just how expensive the system might become. I do want to stress again that we feel strongly that the recall system is unnecessary.

That concludes our remarks at this time, and I would like to have the opportunity, if I am permitted to do so, to direct your questions to the various people in our delegations.

Senator van Roggen: I would like to get from both the manufacturers and the departmental officials a great deal more information than we have on the subject of recall, which seems to be the most important of the various points that have been raised. This is fairly fundamental because to maintain the necessary record system for these millions of tires being put through the system, that is the wholesale and retail system, every year is obviously going to be somewhat cumbersome and is going to add to the cost of the tire. I would like more evidence on how cumbersome and how costly it might be. I think I understand your point that it is not too practicable because unlike a motor vehicle recall system, which I think we can all understand, only a small percentage of accidents caused by tire defects are caused by those that are inherent in the manufacture as opposed to those caused by the tire's being worn out.

Furthermore, how can you cure a defective tire which has been designed properly and manufactured properly and passed by the inspectors and has met the regulations of the department and has the symbol on it? That tire goes out into the system and is then found to be defective, and I suppose it could be from a design point of view, or, to get away from the term "design", from the nature of the structure of the tire, and I suppose you would really recall them for the purposes of throwing them away.

Could you let us have some evidence as to whether the defects that would be found in tires could be corrected or whether that particular type of tire, if it was found to be unsafe, would need to be withdrawn—that is all, those tires that went out into the system—to be thrown away? I must say that I would like a great deal more evidence before I would be willing to follow your suggestion that we delete the recall system rather than leave it in.

Mr. Goudie: If I may direct myself to the latter part of your question first, it is true that in most cases if it was decided that a tire should be recalled it would probably be eliminated. The only type of non-compliance that I could envision would be the labelling—that is, if the tire were not properly marked—and this could be corrected. This is one possible situation in which the tire would not necessarily have to be thrown away.

Senator van Roggen: But perhaps that would not be a defect.

Mr. Goudie: No, but it would be a non-compliance.

Senator van Roggen: But it would not be a question of the safety of the tire.

Mr. Graydon: Mr. Clarke has a comment.

Mr. Clarke: Mr. Chairman, there is one example which occurs to me of what might be thought to be a defect involving a safety risk and that is the possibility of creating or putting on the market a tire that does not have the tread wear indicator bars. This really does not affect the safe functioning of the tires, but it may have a certain element of safety risk in that it does not draw to the attention of the consumer the fact that he has worn it down to the low tread level, and the possibility is that one may say that you can correct this defect, through lack of tread wear indicators, by being aware that they are not there. This can be checked so that one does not go down below the 2/32 of an inch and run to a bald tire. That is one illustration of something that could be considered to be a safety risk defect or failure in the production of this tire and putting it on the market.

Senator van Roggen: What I am trying to get at, Mr. Chairman, is a value judgment as to where the cut-off point is in setting up the system of record-keeping that would be necessary to keep track of the tires and who buys them for recall purposes, a value judgment as to whether or not the setting up of that system is a practical thing in the light of what it is likely to accomplish. We do not have very much evidence as to the scale.

Mr. Goudie: Mr. Chairman, it is my understanding that the experience in the United States in their record system of tires sold in the market, and the opinions I have had from people there indicate that they are only accomplishing input from the retailer and dealers at the consumer level of something in the area of 25 to 35 per cent. This is where the human element comes in.

So far as the effectiveness of the system is concerned, one can create and establish and maintain the system, but unless you have the data input, then it will only be fruitful to the extent that you have it. As I say, their indications to me are that 25 to 35 per cent is the most that is coming back from independent dealers. Where tire companies control their own retail store outlets, they are, of course, able to control a greater percentage. I believe that that is somewhere in the area of 75 to 80 per cent and, of course, there is still the human element.

Senator Neiman: Mr. Chairman, I should like to find out if in the United States system the onus is on the vendor to keep a record of who the purchaser is?

Mr. Graydon: Perhaps Dr. Campbell could answer this precisely. I believe the legislation in the United States

requires the manufacturer to provide the means of input in the hands of the dealer so that a card can be filled out and sent in to be recorded. I believe there is no positive requirement in the legislation that the dealer in fact shall perform that function.

Senator van Roggen: So that in the United States when you get the tire you also get a card.

Mr. Goudie: If the dealer gives you one.

Senator van Roggen: Yes, you are entitled to a card with your tires, and you send that in just as you send in a guarantee certificate when you buy a new refrigerator. Then the manufacturer would indeed have a record so that with today's computer system you would just push a button and out would pop a card showing all the people who would have defective tires. Those who do not wish to avail themselves of that system of sending the card in would fail to do so at their own risk. Is that what is contemplated as the practice in this connection? What do you plan to do under this proposed section? What sort of records will be set up? You mentioned the cost being passed to the consumer. What will that cost be?

Mr. H. Gordon MacNeill, President, Goodyear Tire & Rubber Company of Canada Ltd.: I do not think we are objecting to a system of recall. We really think it is unnecessary, but if the government believe it is necessary, we are not objecting to a system. The system projected in this legislation, however, is, I would say, almost impossible to operate and it is impractical to operate. It would end up, if we believe what we read in this bill and we have to keep track of tire sales to all the chains of distribution, all the service stations and department stores and everyone who sells tires in Canada, with the cost that we pass on to the consumer being considerable. Is it really necessary to do this? We do not believe it is. The system as we interpret it is very cumbersome, judging from the experience in the United States, where such a system has been in force for several years and is really not working out because only 25 to 30 per cent of the cards are returned by the dealers. So the system is not working 100 per cent, or anywhere near it.

When we consider the tire business, at the point of sale a man is selling a tire. His hands are dirty as he has just installed the tires on the car. He comes in and has a white card to complete. He is busy and just does not do it. I do not believe there is any means by which the tire manufacturers could force all the service stations, dealers and department stores throughout Canada to do this. Were the onus put upon the consumer, that might be a different situation. The cards could be given to him for completion and return.

Senator van Roggen: Then the returns would be even less.

Mr. MacNeill: Yes, I think the number would be even less.

Senator van Roggen: Perhaps I could switch my questions to the departmental side and see what comments Dr. Campbell has in that respect?

Dr. Campbell: Specifically? We believe that a recall system is necessary. The wording in the bill was left as flexible as possible. I do not believe that we had the intention of requiring the manufacturer to keep this complete trace of where the tire moves through the distribution system, but we did believe that such a recall system was necessary, for two reasons. It has been introduced in the United States and I believe all the Canadian companies are involved in it. Therefore, the marginal cost of extending the system to serve Canada should be relatively small. If defective tires are produced I know of no other way of alerting the owners of those tires to the fact that they may be exposing themselves to an unnecessary hazard. Ideally, I would say that the consumer would have a responsibility to return this card to the manufacturer so that he had a record, and perhaps this could be done by persuasion, by provincial and local government action. I do not think that we would have the power to force the retailer or the consumer to return the card. In my opinion the service, however, should be made available to the consumer, particularly if he is interested enough in his own safety to complete the card and return it.

Senator van Roggen: It seems to me that you are not too far apart, then. Maybe it is just the wording of the section that causes the problem. If you are content with the consumer having a card that he can return I wonder, Mr. Chairman, if it would be practical, rather than to take more time of the committee at this moment, to ask the industry and the department if they could not discuss this point? They could, perhaps, agree on wording that would be satisfactory to both in respect to this particular clause, as a starting point, rather than our producing a third suggestion, which may not be satisfactory to either one of them.

Dr. Campbell: It is always rather difficult to anticipate the problems we might encounter in the future. We therefore left this section reasonably flexible, in the hope that regulations can be worked out.

Senator van Roggen: I am not sure I can agree with you that it is that flexible. You could make it more flexible and make reference to regulations, but let us bear in mind that regulations cannot change the act once it is passed and where it uses hard, precise language, that hard, precise language becomes law.

Senator Neiman: Mr. Chairman, I would have to agree with Senator van Roggen in connection with the comments Mr. Clarke made. When the act states "any subsequent purchaser" it makes it very extensive.

Senator van Roggen: Yes, and regulations cannot cure that. There is nothing worse than for a committee to attempt to write a letter. For us to attempt to re-word that clause right here with a dozen of us talking at once would be impossible. Maybe during the lunch break two or three could meet and do something about it.

Senator Riley: Mr. Chairman, I would like to ask if the industry has made any estimate, percentagewise, of the increased cost of the tire to the consumer as a result of this act and the proposed regulations?

Mr. MacNeill: Yes, I can answer that. I think, because of the broad outline of that clause of the act, it could vary from, say, 15 cents a tire. I am quoting this figure out of my head. If we had to go through all the chain of supply it would probably be up around 30 cents a tire.

Senator Riley: Percentagewise, what has been the increase in the cost of tires to the consumer over the last year?

Mr. MacNeill: As you can appreciate, there are tires and tires, so I cannot give you the complete list. I would say 12 per cent, and that is all part of the problems we have had recently with the petrochemical crisis. However, for the period 1961-71 our price index only increased by a little over 11 per cent. In the last year, however, we were hit very hard by the petrochemical crisis and the prices of the raw materials are increasing astronomically.

Maybe Mr. Moore of Firestone would take an educated guess?

Senator McElman: The increase during the last year has been equal to the total increase of the previous 10 years, has it not?

Mr. MacNeill: Yes, sir; the cost of natural rubber had increased from 17 cents per pound two years ago to 52 cents per pound today. Synthetic rubber was 13 cents per pound a year ago and it is now 22 to 25 cents per pound.

Senator Riley: Mr. Chairman, I have been told by members of the trucking industry that during the past year the cost of tires has increased by 32 per cent. Would that be accurate?

Mr. MacNeill: Yes, because the tread is mostly natural rubber, which has increased from 17 cents a pound to 52 cents a pound.

Senator Riley: Does the industry estimate that the cost for the next year will be much higher than it has been over the past?

Mr. MacNeill: Yes, sir. Again I would invite Mr. Moore to comment, because I do not think we have really seen the effect of the new crude oil prices yet. We have not seen it coming down the end of the pipeline. It takes six gallons of crude oil to make a passenger tire, so you can see the effect the higher crude oil prices will have and have had. I do not think we have yet seen the effect down through the polyesters, nylons and the other oil derivatives.

Mr. J. Doran Moore, President, Firestone Tire & Rubber Company of Canada Ltd.: I would just like to corroborate what has been said by Mr. MacNeill. Further on the subject of recall notification, I would like also to say that it is not difficult for us to set up a system in as much as, as has already been indicated, such a system does already exist in the United States.

I should like to point out that we are talking about 20 million tires a year going through perhaps three sets of hands in the process of getting to consumers.

If we have the responsibility for tracing or are held legally responsible to trace all those transactions, we are talking about 60 million transactions a year, and that has to be very costly.

The only objection we have to the program is the fact that, firstly, we do not feel that it will be more than perhaps 20 or 30 per cent effective. For that reason we would prefer to see it written out of the act.

Senator Riley: Most new cars are accompanied by a guarantee, is that right? How many of those slips would you say come back to the manufacturer?

Mr. Moore: Excuse me, but they are not accompanied by a piece of paper or a card in each case. They are covered broadly by published warranty policies.

Senator Riley: But in some instances you do get a slip of paper to be returned to the manufacturer.

Mr. Moore: Not to be returned to the manufacturer, no.

Senator Riley: To whom?

Mr. Moore: To no one. In the event of a tire failure or defect, a person may come back to the source from which he purchased the tire and be taken care of. But he does not have to have any written card, piece of paper or document. If the tire is defective, the warranty applies to any place in the world on presentation of the warranty.

Mr. MacNeill: We also have what is called a road hazard warranty. If you run over a piece of broken glass in your driveway in a fairly new car and cut a tire, you can go back to your dealer and he will give you a pro-rate equivalent new tire. It is equivalent to buying a new car, running into a post and wrecking the car, and going back to the car company and saying, "I need a new car; the post was in my way." This is a very liberal guarantee or warranty that the rubber industry has had for a number of years.

Mr. Moore: I think that our hangup, if we can call it that, is in being legally responsible for accounting for the final sale of every tire to consumers. On a voluntary basis we are quite prepared to install the system, but the onus of responsibility for the input into the system should not be the responsibility of the tire manufacturing company. It should be on either the dealer, whoever he might be, or the consumer. But we will provide the system.

Senator van Roggen: Mr. Chairman, I should like to have more evidence from the department on this. Even if it costs only 30 or 50 cents per tire, it would involve a huge amount of paper work—and we have so much of it in the world that any that could be eliminated would be worthwhile.

It seems to me unreasonable to expect that we might be able to police a system whereby the dealer at the gas station level shall be required to keep proper records and file them with the department. The public will not return many of those things.

I should like to have some evidence from departmental representatives on what we are talking about. We have evidence that about one per cent of accidents with motor cars are related to tires. I would suspect that a high percentage of that one per cent is related to tires that are worn out, worn down, under-inflated, or something else—that are not brand new tires.

With the manufacturing criteria to be established by regulations, which manufacturers—and there are only 13 of them—will be required to police, they will have to manufacture their tires, in the first instance, in compliance with the regulations and the possibility of a faulty batch of tires getting out will be very limited.

We get down to an infinitesimal fraction of one per cent, a thousandth of one per cent of motor vehicle accidents that are likely to be affected one way or another by whether or not the recall system is in effect.

From the view point of weighing things in the scales, I should like some evidence on the advantage of putting this system into being at a cost of several million dollars a year to the economy, relative to the number of accidents that are likely to be avoided by the recall system.

Dr. Campbell: Perhaps I could ask Mr. Gray, our legal counsel, to speak to that point.

Mr. J. T. Gray, Senior Ministry Executive, Legal Branch, Ministry of Transport: Mr. Chairman, I cannot speak about the number of accidents or how many accidents will be avoided by the recall system; but I should like to speak briefly about the legal machinery with respect to recall, and the matter of having manufacturers keep a record system of purchasers of tires.

In the first place, the provision requiring the keeping of a record system comes under clause 4 (1)(e) on page 3 of the bill.

Paragraph (e) is a regulation-making power. Firstly, there is a power there which the Governor in Council may or may not use at his discretion, depending on whether the public interest requires it. If they do decide to make a regulation requiring the institution of a record-keeping system, they have the discretion of making that system as difficult or as lenient as they wish.

If tire manufacturers can convince the department that there is no way—and I suspect they could do this—that they can trace every tire from the time it is manufactured to the ultimate purchaser in every case, then I think the end result would be that the department would not propose a record-keeping system that was all that difficult.

In other words, they may perhaps end up with a system under which the ultimate purchaser would be given, with the tire, a card to fill out, if he was sufficiently safety conscious to go to that trouble. It would be more or less voluntary when it got that far down the line.

My other point is that clause 8 is being somewhat confused with clause 4. Clause 4 is a regulation-making one under which the record-keeping system would be instituted if the Governor in Council or the department felt that it was essential in the public interest.

In the case of a notice of defect, the only persons that the manufacturers would have to notify are those of whom they have a record. They do not in every case have to chase down the ultimate purchaser. If they have a record of the ultimate purchaser they would have to notify him but if there is no record he would not be notified.

On the average, there is more apprehension than wording of the legislation would justify.

I have spoken about the legal aspect. I cannot speak about the number of accidents that might be avoided by recall.

Senator Flynn: The question then arises: What is the intention of the ministry at this time with regard to this power concerning regulations?

Dr. Campbell: The ministry would like to have this power.

Senator Flynn: Why?

Dr. Campbell: Because there are recall campaigns involving tires. There should be a system to ensure that the purchasers of these tires have some protection, and whereby they can be notified.

We also believe that this system would be to the advantage to the manufacturer. If a manufacturer inadvertently produces an unsafe tire, he has an obligation at this moment to do everything possible to notify the people who are in possession of such defective tires. This legislation provides a formal procedure by which the manufacturer can discharge his obligation to the public, and in that way it is to his advantage. If he follows this procedure, then he has discharged his obligation to the public. If this procedure is not provided, then his task of trying to trace those products and to warn the people who have purchased them becomes a much more difficult one. If the manufacturer produces an unsafe tire and someone is involved in a motor vehicle accident as a result, then I would suggest that the manufacturer would have a legal responsibility, subject to litigation. He is sitting back with the knowledge that that unsafe tire is out on the market and being used.

Senator Flynn: He would have a responsibility one way or the other.

Dr. Campbell: Under the common law.

Senator McElman: In today's circumstances, assuming a batch of unsafe tires reaches the market, what is the procedure by which the manufacturer recalls those tires, or advises the public?

Dr. Campbell: Perhaps the manufacturers could tell us what procedures they have used in the past. The only experience I have had involving the recall of tires was in respect of tires provided on new motor vehicles. Where that is the case, of course, the motor vehicle manufacturers have records of where the vehicles were sold and who would be in possession of those tires. But there were other times when tires which were not sold on new vehicles but rather on the public market were recalled, and perhaps the manufacturers can tell us what steps they took to notify the owners of those tires.

Mr. Clarke: Perhaps I can comment on that to some extent, Mr. Chairman. The manufacture of a batch of tires with a defect problem such as the one I mentioned earlier, where they did not have the tread wear indicators, does not occur very often. If the defect is discovered reasonably early in the life of the tires, there is a good likelihood that a large quantity of them are still within the distribution system; that is, they may be in the tire manufacturers' warehouses, in the dealers' warehouses, or the subdealers' warehouses. We have on occasion sent notification to our dealers and our subdealers saying that there was a certain tire with a certain problem and requesting that they check their stocks and return any such tires that they may have. To that extent, we can prevent such tires from going further into the stream. It is very difficult for us to go beyond that to the consumer, because we do not know who the consumer is. I believe where that has occurred the problem was discovered early enough that within a matter of two or three months the bulk of those tires were reclaimed within the distribution system.

Does that answer your question?

Senator McElman: Not entirely. I presume that at some point in time there have been tires with a structural defect put on the market. What would happen if the defect was

discovered within a relatively short period of time after the batch of tires had gone through the distribution system? How would you go about advising the public of the danger involved? How have you done it in the past? Presumably there have been such experiences.

Mr. Moore: I would like to try to answer that question, if I may, Mr. Chairman. We have been talking about a batch of tires going through the system and on to the consumer market. In point of fact, in most instances of defective tires it would only involve one tire out of a whole batch of tires. In other words, because one tire has a defect it does not mean that the whole batch is defective. The defects which in fact occur, for the most part are caused by human error. The tire builder, for example, may leave out a ply, or something of that sort. He is human; he might have had a bad night the night before.

That type of defect is much more common than instances where a whole batch of tires is defective. With our quality control system, it is very rare that a whole batch or run of tires will be defective.

To answer your question specifically, senator, if it is in connection with original equipment tires—and we did have one such recall recently—we handle it through the automobile company, as Dr. Campbell has indicated. We have not had occasion to attempt to recall, or had reason to want to recall, any other tires. As Mr. Clarke has indicated, there are some things noticed such as the absence of a tread bar. That simply means that a mold was put into use that was not adapted. That is all. But that is not really considered to be a safety related item, so consequently we would not do anything.

We have only ever recalled tires from the field by sending out notification to our sales organization, our dealers' organization, and so forth. We do not pretend that we have ever managed to reach the consumer in that regard. It is a very infinitesimal thing. It has only happened once in the history of our company, that I can recall.

One final point. I should like it to be known that as far as my company is concerned—and I think this applies to the other companies as well—we are already manufacturing to these standards all lines of tires, not just original equipment tires. We are testing all lines of tires as well, not just original equipment tires.

Mr. MacNeill: The same applies to Goodyear. I think what you have to realize is that there is quite a lag, as far as the replacement market is concerned, between the time the tire is manufactured, the pipeline is filled, and the tire is put on the market. For instance, we start manufacturing winter tires in June, filling the pipeline throughout, and we will not sell those tires until November; they will not reach the consumer until November. So if a defect is discovered we know exactly where those tires are. We have had one very minor case of this happening in the five years I have been President of Goodyear, and it was a simple task to pick up the tires because they were in the pipeline. If there is a defect, our quality-control system will pick it up very, very quickly.

As far as original equipment is concerned, those tires might go on the car within a week, days, or even hours after being manufactured, so I think the recall system is necessary in that respect. We do not have those tires in the pipeline. We are quite convinced that we will pick up any defects through our quality-control system.

Senator van Roggen: Mr. Chairman, clause 4(1) leads into subparagraph (e), and it reads as follows:

> 4. (1) The Governor in Council may make regulations respecting the use of the national tire safety mark in relation to motor vehicle tires and, without restricting the generality of the foregoing, may by such regulations—

So even if you deleted subparagraph (e), Parliament could still impose a recall system under the regulations. Perhaps it is a rather academic point. Perhaps the representations should be made to the department.

Senator Flynn: The other problem is whether Parliament is prepared to give the ministry such wide power of regulation. This is always a problem. If Parliament says the ministry can do whatever it wants, then why are we here?

Senator Riley: Mr. Chairman, while Dr. Campbell is here, and irrespective of the intent of the act in respect of retreads and the jurisdictional problem, what would happen if I, as an unsophisticated consumer, bought a retread which still displayed this safety symbol? Am I not being deceived?

Dr. Campbell: The symbol would have no significance so far as the used tire is concerned, and it is not the intention to make this a conspicuous symbol that would be—

Senator Riley: It is visible.

Dr. Campbell: —necessarily something the public will be aware of or be looking for, because it is really a legal device for bringing the tires under the authority of the government to regulate.

Senator Riley: Suppose I see this symbol when I buy a retread, am I not being deceived if this symbol indicates that this is a safe tire and has met all the standards of the regulations under the act? I am talking from the standpoint of the consumer.

Dr. Campbell: Only in so far as it is a new tire would it have any significance. I seriously doubt that the consumer would recognize that symbol on the tire or know its significance. If he did, he should know that it related only to a new tire. With any tire that is in use, after it has been used, an perhaps abused, the mark would not necessarily have any significance.

Senator Flynn: Could you provide for the deletion of the mark when the tire is being retreaded?

Dr. Campbell: I seriously doubt that we could do that, or that we could enforce it.

Senator Flynn: You could probably enforce it, because generally the retreading is done locally.

Dr. Campbell: There are vaious other marks on these tires that are provided to assure the original purchaser that the tire meets the specifications. There is a DOT mark on tires sold in Canada, which is a mark provided by the United States Department of Transportation to indicate that the tire complies with their regulations. There is a VI mark on the side of the tire, which indicates that it complies with the minimum tire safety standards of the VESC Code in the United States, which is a code developed by the 50-state governments. There are various other marks already on the tire, but they relate only to the design of the

new tire, not to the safety of the tire after it has gone into use, because no one can possibly give that assurance.

Mr. Moore: However, those marks do indicate to the consumer that the original carcass was manufactured to conform with all new tire standards, so all that remains to be guaranteed is the actual retreading process.

The Chairman: That does not apply in this bill. This applies only to new tires.

Senator Flynn: But why not regulate retread tires?

The Chairman: Let us get the new tires out of the way first.

Senator Flynn: But to understand the use of the bill, we have to understand why it deals only with new tires. On a question of safety it seems that retread tires should enter the picture.

Dr. Campbell: The manufacturers in their presentation raised a point about performance standards. They took some exception to the use of the words "design construction," referring to safety standards. It is the intention of the minister, and it has been the practice of the minister in the Motor Vehicle Safety Act, to write performance standards so far as it is possible to do so. However, at certain times it is necessary to introduce design requirements into these standards. For example, there must be two headlights, one on either side of the car. That is not a performance standard; that is a design standard, because it is impossible in this case to write a performance standard. Some of the labelling requirements are not performance standards but are really to do with construction. The regulations, as we have them, are primarily performance standards, so as not to restrict the scope of the manufacturers to innovate and design good products, for which they are most competent.

With regard to recapped tires, it has been impossible to the present time to write a true performance standard. The only thing that can be prepared at the present time, to the best of my knowledge, is a code of good practice in retreading, and we are in the process of working with the provinces, through the Canadian Standards Association, to develop this so that the provinces could use it to exercise some control over local businesses engaged in retreading tires.

Senator Flynn: The main problem there would be to have a sign on the recapped tires to warn the consumer that it is not a new tire but has been recapped.

Dr. Campbell: This would be included in the code of practice. Usually these are easily identified at the present time. It is really a local business and should be regulated locally.

Senator Riley: You have been discussing thiw with the provinces?

Dr. Campbell: Yes.

Senator Riley: Have you discussed the practicability of certification of the people who are actually involved in the retread process, the operators of the machines?

Dr. Campbell: That again would have to be provincial jurisdiction.

Senator Riley: I understand that.

Dr. Campbell: This is not being done at the present time, but it may come to that if it is impossible to control the industry by persuasion or to have it police itself. For example, at least one province is at the present time contemplating issuing special licences to mechanics who have a responsibility to certify vehicles as safe, for the purpose of being able to withdraw that licence in the event of malpractice or incompetence. It might ultimately reach that stage in the retreading industry.

Senator Riley: This would be about the best system you could use for the protection of the public in retreads.

Dr. Campbell: In retreads, yes.

Senator Riley: That is, licensing the individual operating the machines in the process of retreading. What are the present standards set for two-ply tires? Are two-ply tires allowed on the market now?

Dr. Campbell: Yes.

Senator Riley: Are they considered safe?

Dr. Campbell: Yes. We set performance standards, but the manufacturers could perhaps comment more competently than I could on why in some cases they use two-ply, four-ply and six-ply to achieve a given performance level.

Senator Riley: Are there not American regulations or standards now requiring that new cars have a heavier than two-ply tire on them?

Dr. Campbell: No. Perhaps one of the industry engineers could speak to this problem, because there is a great deal of public confusion about this matter.

Mr. Goudie: Mr. Chairman, I would like to give a brief analogy, if I may, of the two-ply tire versus the four-ply tire. You can imagine that the fabric carcass of this tire is composed of a series of strands of fibre material twisted and wound together. You can imagine four pieces of rope supporting a body or member of some sort, and taking two of those strands and winding them together and taking the other two and winding them together, you end up with two strands instead of four. But you have the same material there supporting them. This is essentially what is done when the tire is, shall we say changed in design from a four-ply tire to a two-ply tire. You can go one step further and take those two and twist them into one and end up with a one-ply tire, which we have and which we make. One of the most durable tires that we can make is the one-ply tire. It has one steel bar and that is an extension of the strong material, but the concept is that the number is really insignificant. It is the strength factor and the supporting ability that is appropriate. I will say the two-ply tire probably had diminished in usage considerably in the last few years. Your belted tire, is a 2 plus 2, really a two ply tire, with two additional tread bodies which only are involved in a portion of the tire, that is in the tread area. So that you might consider that as a two-ply tire as well.

Mr. Moore: Mr. Chairman, if I could relate back to the retread system, I am not certain that Dr. Campbell should not be concerned with retread standards, because retreading is not just a small provincial matter. I am not sure whether you are aware of it or not, but the two biggest

retreaders in Canada are right here in this room, that is, Firestone and Goodyear. Retreaded products are sometimes transported from province to province, so in that respect there is not much difference between them and new tires.

I know that some of the provinces are considering retread legislation or retread standards. I know that we have had conversations with some of the provinces. I would not be adverse to seeing the retreads handled in the same way as new tires, that is, by the federal government.

Senator Flynn: And indentified as such?

Mr. Moore: Yes.

Senator Flynn: Mr. Chairman, I have a question which was suggested by Senator van Roggen, who had to leave. Dr. Campbell dealt with it in part. He was worried about the significance of the word "design" in the definition of safety standards. He said something about the motor vehicles, but design as applicable to a tire, here seemed a rather nebulous concept.

Dr. Campbell: I am not sure that I can at the moment give you an example of a standard which we might use which would relate to the design. As I have indicated, these are primarily performance standards. Perhaps the labelling requirements on the side walls of the tires are design standards, because we specify where they should be. They really do not relate to the performance of the tire.

Senator Flynn: They might be related to the safety or some standard like that. You say you do not have in mind the colour of a tire.

Senator Neiman: I would like to discuss with Dr. Campbell one matter I happened to hear on the radio. I think it related to design, but whether that would come within standards or not I do not know. One of the aldermen in Toronto was objecting to a certain design of truck tire tread, which I think was a square design, which I think he said seemed to cause a great deal of noise. He said it was the design of the tire, but I understand that although it can apply to new tires, that it is mostly applicable to retreads. Would this be an example of "design" that might come within that set of standards?

Mr. Goudie: May I comment on that? The tread pattern is the basic factor which determines the noise level of the tire. Here again the question that I think is pertinent is this: Do you want to legislate the design or do you want to legislate the acceptable noise level?

Senator Neiman: How do you separate these two things?

Mr. Goudie: That can be done by saying that you can make any design you want as long as it does not make more noise than a given level—that is, rather than someone saying that you may not make one with a little square configuration. That is correct, that is the sole factor that determines noise.

Senator McElman: As I understand it, Dr. Campbell, the CT, the symbol, has no relation to assuring the individual buyer that the tire is safe. Its purpose is that before the manufacturer can put it on it has to meet all standards. In other words, you do not anticipate that buyers will go around looking for that trade mark; it has no relationship to public acceptance of that tire.

Dr. Campbell: That is right. Because all tires will meet the performance standards, there is no need for the average consumer to examine the tire to find out what marks it has on it of this type. So I do not anticipate any public education campaign to acquaint the public with the presence of this mark. I think it can be relatively inconspicuous. It would be confusing to the public as well, because tires imported into Canada will not necessarily be required to carry this mark. I think this would be an unnecessary restriction on international trade, to require this mark as a condition of importation. Imported tires would not have the mark, whereas those manufactured in Canada would have the mark, and the public would be confused, seeing some tires with the mark and some tires without the mark.

Senator Riley: Why not have the imported tires carry the mark? Why should not those tire manufacturers be required to put the Canadian symbol on if they are exporting these tires to Canada?

Dr. Campbell: If there is a tire manufacturer in the business of making a line of tires for Canada and the United States and Europe, then he would have to put on our CT, the United States DOT, the European D mark and probably the British Standards Association mark, BSA.

The Chairman: Where would he put the name of his company?

Dr. Campbell: There would be no room left on the tire! I think it would be unreasonable to require every manufacturer to provide all of the necessary marks on every tire, because he does not necessarily know exactly where that tire is going to be sold.

Mr. Clarke: The essence of it is to regard the application of the mark to the tire by the Canadian manufacturers as in itself a declaration that this tire comes up to the required standards. I believe the ministry would have the power, at the point of import, to require, not on the tire but on paper, a declaration that the tires being imported are up to the standard. That is the objective.

The Chairman: We are not getting into that problem at the moment; we are just dealing with new tires. Are there any other further questions of any other officials of the Rubber Association, or of the minister?

Mr. Graydon: Getting back to the concern we have expressed as to whether the legislation permits design or performance standards, I think the industry has no quarrel with the intent as expressed to develop standards for performance. Our concern is that the legislation is so broadly worded that, should the intent change at a later date—and legislation has a habit of staying on the books for quite a while—perhaps we would find ourselves with the government designing and doing much more than intended at the present time.

The Chairman: As there are no further questions and no further comments, honourable senators, is it your wish to report the bill?

Senator Langlois: Mr. Chairman, I move that we report the bill without amendment.

The Chairman: It has been moved by Senator Langlois, seconded by Senator McElman, that this bill be reported

to the house without amendment. Is it your pleasure to adopt the motion, honourable senators?

Hon. Senators: Agreed.

The Chairman: Carried.

Before leaving, I wish to thank the officials and members of the Rubber Association for appearing before us this morning. We will take note of their methods, and I know that the ministry will, in the regulations, make them satisfactory to the Rubber Association and the tire manufacturers.

The committee adjourned.

Published under authority of the Senate by the Queen's Printer for Canada

Available from Information Canada, Ottawa, Canada.

Government Publications

CAI YC 11 -T63

SECOND SESSION—TWENTY-NINTH PARLIAMENT
1974

THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING SENATE COMMITTEE ON

TRANSPORT AND COMMUNICATIONS

The Honourable MAURICE BOURGET, *Deputy Chairman*

Issue No. 3

LIBRARY
MAY 17 1974
UNIVERSITY OF TORONTO

WEDNESDAY, APRIL 10, 1974

First Proceedings on Bill C-5 intituled:

An Act to authorize the provision of moneys to meet certain capital expenditures of the Canadian National Railways System and Air Canada for the period from the 1st day of January, 1973, to the 30th day of June, 1974, and to authorize the guarantee by Her Majesty of certain securities to be issued by the Canadian National Railway Company and certain debentures to be issued by Air Canada

---

(Witnesses:—See Minutes of Proceedings)

27421—1

STANDING SENATE COMMITTEE ON
TRANSPORT AND COMMUNICATIONS

The Hon. J. Campbell Haig, *Chairman.*

The Honourable Senators:

Blois	Langlois
Bourget	Lawson
Burchill	*Martin
Denis	McElman
Eudes	Molgat
*Flynn	Petten
Forsey	Prowse
Fournier (*Madawaska-Restigouche*)	Riley
	Smith
	Sparrow
Graham	van Roggen
Haig	Welch

20 MEMBERS

(Quorum 5)

**Ex officio member*

Order of Reference

Extract from the Minutes of the Proceedings of the Senate, April 9, 1974:

Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Langlois, seconded by the Honourable Senator Denis, P.C., for the second reading of the Bill C-5, intituled: "An Act to authorize to provision of moneys to meet certain capital expenditures of the Canadian National Railways System and Air Canada for the period from the 1st day of January, 1973, to the 30th day of June, 1974, and to authorize the guarantee by Her Majesty of certain securities to be issued by the Canadian National Railway Company and certain debentures to be issued by Air Canada".

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Langlois moved, seconded by the Honourable Senator Martin, P.C., that the Bill be referred to the Standing Committee on Transport and Communications.

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

Robert Fortier,
Clerk of the Senate.

27421—2

Minutes of Proceedings

April 10, 1974.

Pursuant to adjournment and notice the Standing Senate Committee on Transport and Communications met this day at 10:10 a.m.

Present: The Honourable Senators Bourget (*Deputy Chairman*), Denis, Flynn, Forsey, Langlois, Martin, McElman, Riley and Sparrow. (9)

Present, but not of the Committee: The Honourable Senators Aird, Benidickson and Desruisseaux. (3)

The Committee proceeded to the examination of Bill C-5 intituled: "An Act to authorize the provision of moneys to meet certain capital expenditures of the Canadian National Railways System and Air Canada for the period from the 1st day of January, 1973, to the 30th day of June, 1974, and to authorize the guarantee by Her Majesty of certain securities to be issued by the Canadian National Railway Company and certain debentures to be issued by Air Canada".

On Motion of the Honourable Senator Flynn it was *Resolved* to discuss the above Bill until noon this day, that the meeting be resumed at a later date, and that no Report of Committee be submitted this day.

The following witnesses were heard in explanation of the Bill:

Mr. G. M. Cooper, General Counsel, Canadian National Railways; Mr. W. R. Corner, Vice-President, Accounting, Canadian National Railways; Mr. John P. Sheehan, Controller, Air Canada; Mr. Claude I. Taylor, Vice-President, Public Affairs, Air Canada; Mr. Myles Foster, Director, Government Finance, Department of Finance.

At 12:05 p.m. the Committee adjourned to the call of the Chairman.

ATTEST:

Denis Bouffard,
Clerk of the Committee.

The Standing Senate Committee on Transport and Communications

Evidence

Ottawa, Wednesday, April 10, 1974

The Standing Senate Committee on Transport and Communications, to which was referred Bill C-5, to authorize the provision of moneys to meet certain capital expenditures of the Canadian National Railways System and Air Canada for the period from the 1st day of January, 1973, to the 30th day of June, 1974, and to authorize the guarantee by Her Majesty of certain securities to be issued by the Canadian National Railway Company and certain debentures to be issued by Air Canada, met this day at 10 a.m. to give consideration to the bill.

The Deputy Chairman: Honourable senators, I see we have a quorum.

Senator Flynn: Are you sure?

The Deputy Chairman: Yes. The quorum is five, and we are eight.

Senator Flynn: But those who are not members of the committee cannot be counted.

The Deputy Chairman: Only Senator Desruisseaux is not a member of the committee.

Senator Benidickson: I am not a member of the committee.

The Deputy Chairman: Well, I see we have Senators, Denis, Langlois, Riley, Flynn and Sparrow. Including myself, that is six.

Honourable senators, we have before us today for study Bill C-5, the Canadian National Railways Financing and Guarantee Act, 1973. Appearing as representatives of the CNR are: Mr. W. R. Corner, Vice-President, Accounting; and Mr. G. M. Cooper, General Counsel.

Appearing on behalf of Air Canada are: Mr. Claude I. Taylor, Vice-President, Public Affairs; and Mr. John P. Sheehan, Controller.

To all of you gentlemen, I extend a hearty welcome to our committee and our thanks for having accepted our invitation at such short notice.

Senator Flynn: Mr. Chairman, I have a preliminary objection to make. This committee meeting was called for this morning with the notices being delivered to honourable senators' offices after 8 o'clock last evening, at which time the Senate was not sitting. During the course of the debate in the Senate it was indicated that there was no rush in having this piece of legislation passed. It is not going to make any real difference if it is passed after the Easter recess.

It is going to be very difficult to deal with this matter in a short time this morning with so few members of the Senate present. I do not think it is fair to proceed with this bill to its conclusion this morning. I would have no objection to hearing from the witnesses who are here this morning, provided I get some reasonable assurance from the committee that we will not conclude our examination of this bill until after the Easter recess, at which time we can proceed with further and deeper examination of it.

If it is the intention of the committee to complete its examination of this bill today, I will protest and I will not give leave for third reading this afternoon, so nothing will be gained.

As I have said, since these witnesses are here this morning I have no objection to hearing from them, but I do object to the committee completing its examination of this bill today.

The Deputy Chairman: Does any other honourable senator wish to express his views on the matter raised by Senator Flynn?

Senator Riley: Mr. Chairman, there was ample warning given before the Senate adjourned yesterday—

Senator Flynn: Not ample.

Senator Riley: —of the fact that both yourself and Senator Langlois were endeavouring to arrange this committee meeting this morning.

Senator Benidickson: Was that said in the chamber yesterday? I did not hear that.

Senator Riley: It was said in the chamber before adjournment.

Senator Benidickson: I was there and I did not hear it.

Senator Flynn: In any event, we did not know whether the committee meeting could be arranged for this morning. We did not receive notice of the meeting until 8.15 p.m.

Senator Riley: Well, if any honourable senators left, they left with the warning that arrangements were being made for this meeting this morning.

Senator Flynn: If you are satisfied, Senator Riley, that you can do the whole job all by yourself—

Senator Riley: I am not suggesting that.

Senator Flynn: You are, in effect.

27421—2½

Senator Riley: There were other meetings which I wanted to attend this morning.

The Deputy Chairman: As your chairman, I am in the hands of the committee. I understand the points brought forward by Senator Flynn. Nevertheless, I think we can come to some compromise. We should at least hear from the witnesses who are here this morning, as these gentlemen were kind enough to make arrangements to be here at such short notice. I think we should proceed this morning and see what kind of progress we can make.

Senator Benidickson: I made some remarks in the chamber yesterday in this connection. *Hansard* of yesterday is not yet in our hands, but my recollection is that the major point I made was that while there are many things this committee should probably discuss, and particularly it would be difficult for the committee to conclude examination of this bill and report it until we have before us at least the preliminary operations figures for the year 1973.

If honourable senators read the first page of the bill they will see that, in essence, what we are being asked to do is to authorize the provision of moneys for certain capital expenditures for the period January 1, 1973 to June 30, 1974. The CNR, if I recollect correctly, submits its annual report on a calendar year basis.

As I said in the chamber yesterday, I read in a financial journal last week a summary of the operations of the competitor to the CNR for the calendar year 1973, in which it presented to the public, in advertisement form, a summarized statement of 1973 income which was compared with the income for the previous calendar year, with indications whether there had been an increase or a decrease, comparing the one year to the other. I said that I had not personally received a bound detailed copy of the C.P. Railway report, which is usually provided to members of Parliament, as are the annual reports of the CNR.

Even when the CNR 1972 report was tabled in the House of Commons, I think on June 5, 1972, the Minister of Transport, who had tabled the report, indicated that there seemed to be something irregular about the tabling —something was lacking and missing. I would certainly like to examine the minister on what non-compliance with statutory requirements was involved when he made that qualified statement in presenting the reports of both Canadian National Railways and Air Canada at that time.

Yesterday I was criticized for saying I had concluded from the debates that there was no apparent great urgency, because we never passed bills for either the 1972 financing or the 1971 financing. I thought that if the railroads were still operating and the planes were still flying there was not just now greater urgency. However, Senator Langlois replied to that by saying simply that with respect to one item, a pounds sterling item in Air Canada financial requirements for Rolls Royce engines, there was an urgent element connected with it. Again, on that item I would like to hear more from Air Canada, who are not here this morning.

The Deputy Chairman: Yes, they are here.

Senator Benidickson: Anyway, my recollection is that to deal with this bill we have to look at four bills, some of which never got finalization, royal assent or became law. I am thinking of Bill C-186, First Reading February 21, 1972, Bill C-4, for 1971 financing, Bill C-164, First Session, 29th Parliament, and Bill C-5, for this session. In one or maybe more of them there was indeed a previous reference to £13 million for Air Canada's Rolls Royce engine requirements. This item then is of long standing. Of course, it was not all Parliament's fault. I think it was due to bankruptcy and the financial difficulties that the Rolls Royce company itself had got into, with which most of us are familiar.

There is so much, irrespective of the problems related to transportation—which were so thoroughly dealt with in the committee of the other place recently, such as questions relating to the financial structure, that I do not think we could possibly and in all conscience complete our deliberations this morning; and if we are not able to report the bill this morning, I do not know how much progress can be made. However, if it is the will of the committee that we proceed, having before us some financial witnesses—not the presidents but some senior financial officers of the companies—perhaps they could be given some notice of the type of information that might be wanted by members of the committee for some future sittings, before the bill is reported back by this committee to the Senate.

I repeat that even if a printed report is not available, I am sure that by now the continuous audit that Senator Langlois referred to yesterday, which has been going on all through 1973, would provide us with at least some preliminary figures for revenues and expenditures in 1973. Then we could be told how certain capital and other expenditures were paid in 1973. This was provided yesterday by Senator Langlois for the years 1971 and 1972. I repeat, the thrust and burden of responsibility upon this committee at this time, forgetting about water under the bridge, if we do, is what happened in 1973. But we have not a report or any expenditure figures whatever for 1973. The figures that we got last night, and which the House of Commons committee got last November, on how the transportation systems kept running, referred only to the calendar years 1971 and 1972. That is one point.

Next I would indicate to the officers of the companies that, I do not propose to inquire personally into such things as the provision of boxcars, hotel investments, investments by both the CNR and the CPR in the expensive communications tower in Toronto, branch lines nationalization, and all those other things that are of more local interest to elected members of Parliament, which were dealt with very thoroughly this year in the other place in the months of 1973 prior to Christmas, but I do think the time has come when we should get advice on why an annual statute in this form is presented. I think we should find out whether it is, as many say, unduly cumbersome. I would like to know from legal officers in the Ministry of Transport, in Finance and in Justice what they propose in order to avoid placing before us legislation which many people call monstrous, and which I call nonsense, dealing retroactively and retrospectively with matters of this magnitude. I think

it is ridiculing Parliament's function to ask it to perform in this way. How can we improve our procedures?

In the Senate we have not even had a committee meeting on railway transportation and the financing of these very important crown rail and air companies since 1971. I believe there is in the Senate great competence that should be utilized to advise on how the crown corporations can continue to operate with reasonable independence, but at the same time give heed to the fact Parliament represents the only shareholders—the taxpayers. I think we should find out how we could improve this legislative procedure. We only talked about it in 1971. Let us not postpone recommendations any longer.

I noticed in a press report that the Minister of Transport, Mr. Marchand, said within the last couple of weeks that there was a committee of public servants considering means of dealing with transportation problems in general, and with the financial structure and so on. While public servants are doing that, I think there is some competence in the Senate itself to assist in that exercise.

Reference was made in our debates, and also when we had a chance to debate the subject in 1971, to such things as the method of supplying funds to CNR by way of purchase of preferred stock at a fixed rate of interest, which I think was fixed at 4 per cent, and what is done by way of this to provide a very substantial subsidy if we regard current high rates of interest for loaned money. Those advances for preferred stock purchase are mandatory by statute and do not demand any dividend payments at all when the revenues do not provide an adequate surplus for the purpose.

I would like to know what the deficits have been each year since the last massive revision of the capital structure in 1952. We should also be provided with a list of the amounts of money advanced each year to purchase the preferred shares since the act of 1952. Another, perhaps third area, for investigation, which in my opinion is long overdue, is the presentation of a precis indicating the results of management by CNR of government separately owned facilities and entities.

The Deputy Chairman: Senator Benidickson, will you excuse me, please? The members of the committee should make up their minds as to how we should proceed.

Senator Benidickson: Quite. I am satisfied to indicate that these matters are quite important and cannot be dealt with in a very short period of time. Mr. Chairman, I will be quite happy for you to canvass the members of the committee as to their wishes.

The Deputy Chairman: That is the reason for my interruption.

Senator Langlois: Mr. Chairman, I would like to add a few comments to what has been said by Senator Flynn and Senator Benidickson. As I said in the house, both yesterday and the day before, we are putting no pressure on anyone to pass this bill before the Easter recess. I did not indicate, however, that we would not do our best to see that proper consideration of this bill would be given before the recess. Yesterday when I replied to the remarks made by Senator Benidickson I clearly indicated that even though there was not such lack of urgency as he had suggested, there is urgency in dealing with this bill as soon as the Senate could give it proper consideration. I indicated also that we would endeavour to arrange this sitting for this morning in an attempt to dispose of this bill, if possible. If we do not dispose of it today it will be postponed until after Easter, but each honourable senator present must take his own responsibility in this regard. I do not wish to impose my views upon anyone, but all honourable senators present must realize that they have a responsibility. Should they feel they cannot give proper consideration to this bill this very day, it is up to them to ask for an adjournment of our deliberations and postpone the study until after Easter.

In my opinion, however, we have an obligation whilst we are sitting here, rather than doing nothing, to at least consider the bill to the best of our ability in the present circumstances.

Having said that, I wish to return to a request made to me yesterday, and repeated this morning, by Senator Benidickson. Yesterday when I tabled in the house the statement of sources and applications of funds for the years 1971 and 1972, for both the Canadian National Railways and Air Canada, Senator Benidickson asked me if we could obtain similar figures for the year 1973. I undertook to endeavour to provide these figures, if they are available. I have just been informed that the witnesses present this morning are prepared to speak to these figures and provide any information in their possession. In my opinion, these witnesses, as they are present this morning, should be heard. If they cannot provide all the information, it would again be up to honourable senators to decide, in their own judgment, without any pressure whatsoever from anyone, whether they should obtain this information before passing the bill and therefore ask for an adjournment of our meeting until after Easter. That is the only type of pressure I am putting on. I do not think it could even be characterized as pressure.

This is the situation as it developed in the house. The commitment that I gave there, which had already been given by the leader—our position, I think, being approved by the Leader of the Opposition on the preceding day—was that we would proceed with this bill before the Easter recess. The situation has not changed, and I leave it to each individual senator to take his own responsibility. I do not wish to stand in judgment on whatever they intend to do this morning. It is entirely their responsibility, not mine.

Senator Desruisseaux: Mr. Chairman, I am not a member of the committee, but I fail to see how we can really proceed and examine this matter when we have not received the financial statements for 1973. Over 40 subsidiary companies are connected with the CNR and Air Canada, and I believe certain of them warrant questions. We have nothing at all before us to go on. We must rely on the questioning in the debate and that to be carried on here, but it is not sufficient to enable us to ask intelligent questions and expect proper answers.

The Deputy Chairman: What reports are missing?

Senator Desruisseaux: The 1973 annual report and financial statement.

Mr. W. R. Corner, Vice-President, Accounting, Canadian National Railways: I am sorry, we do not have that. We could give a general indication for 1973, but the expectation is that our annual report will be released at the end of this month or early in May.

Senator Desruisseaux: I do not think we should consider the bill before receiving the statements.

Senator Langlois: In this respect I realize that yesterday Senator Desruisseaux was not in the house when I explained this continuous auditing that is to be carried on. My information is that, even though auditors were not appointed for the years 1972, 1973 and up to date, there was a continuous audit carried on. In connection with this bill we are simply to appoint auditors who would then report to Parliament. The auditors in question, who are not yet appointed, cannot report to Parliament. The financial statements of both corporations, however, have been audited, as a matter of fact, by the auditors named in the bill. They were retained as consultants by the boards of directors of each corporation and have done their work. They cannot, however, report, as such, to Parliament today, because they have not been appointed. This bill will do that. If we were to carry out such a study as suggested by Senator Desruisseaux we would never be in a position to consider the bill unless auditors were appointed; and the only way of doing that, as I explained to the house yesterday—

Some Hon. Senators: Oh, no, no.

Senator Langlois: Would you please allow me to finish and reply then? The only way we can do this is by appointing auditors by a special act of Parliament, as was done in the past. This will take a long time. We have been living with this unusual situation, which we all admit, for so long that I do not believe we should prolong it. There is some retroactivity involved in what we are doing, but for goodness sake, let us deal with the situation and see that it does not happen again in the future.

The blame can be placed on the shoulders of anyone but, as I said yesterday, it is due to the slow process of Parliament. The bill in 1972 died on the Order Paper at the time of dissolution, but the general election which followed did not cure the situation, because we had to live in a minority government situation which again caused a bogdown of the procedure in the other place. That is the reason for not having the auditors appointed as they should have been. Let us cure the situation, however. We have to live with it and we must deal with an unusual situation, but let us get it out of the way and see that it does not happen again in the future.

Senator Benidickson: Directly on that point, Mr. Chairman, we received a 1971 report without Parliament appointing auditors, and we received a 1972 report without Parliament appointing auditors. I do not see how we can properly examine this bill, which, I repeat, says it is to consider expenditures from January 1, 1973. The only reason they include the period from January 1, 1974 to January 30, 1974 is because certain commitments have to be met in that period.

Basically it is for the calendar year 1973. Until we get a report—even if it is unaudited or without an auditor's certificate for parliamentary purposes, as it was in 1971 and 1972—how can we proceed intelligently?

Senator Desruisseaux: Mr. Chairman, I should like to say a word on this subject, although I am not a member of the committee. Auditors' statements have in the past been provided for publication in the Public Accounts. This was on a regular basis, when they were not audited. They formed a basis for discussion and for making decisions. I still claim they are necessary.

Senator Flynn: Mr. Chairman, may I move—I think it is the feeling of several members here—that we proceed—

The Deputy Chairman: Are there other honourable senators who would like to express their views on the point raised by Senator Flynn? If not, you may proceed, Senator Flynn.

Senator Flynn: I move that we proceed with the examination of the witnesses who are here until, say, 12.30 p.m. At that time we could adjourn on the understanding that the bill will not be reported today, so that if there are witnesses we want to examine on the points mentioned by Senator Benidickson, Senator Desruisseaux and others, they may be heard.

As far as I am concerned, I have not had the time to prepare. Initially I was not going to attend the committee meeting; another member of the Opposition was going to be here. There is no member of the Opposition present other than myself, and I am not prepared to go on this morning. I thought that another member of the Opposition would be here.

On that understanding, we could report progress at 12.30 p.m. and adjourn until after the Easter recess, when we could have the additional information asked for by Senator Benidickson, Senator Desruisseaux and others. We would then know where we are going.

The Deputy Chairman: As your chairman, I am in the hands of the committee. Personally, I do not want to rush anything, but I think we should start this morning and examine the witnesses.

Senator Flynn: On that undertaking, we may start.

The Deputy Chairman: The committee could sit until 12 o'clock.

Senator Flynn: The bill would not be reported today. That is my motion. I do not want any short-cut. I have seen that happen before—the chairman takes advantage of the fact that no-one is present to oppose the measure, and he gets everyone to agree and rushes the bill through.

The Deputy Chairman: That is not my intention.

Senator Flynn: That is not your intention, but, as you say, you are in the hands of the committee, and if the committee is in the hands of Senator Langlois, we know very well what will happen.

Senator Langlois: That is not so.

The Deputy Chairman: Honourable senators have heard the motion of Senator Flynn. Are you in favour of the motion?

Senator Desruisseaux: Could we have the motion again?

The Deputy Chairman: That today's meeting proceed until 12 o'clock, at which time the committee will adjourn without reporting the bill today. Is that agreed?

Hon. Senators: Agreed.

Senator Langlois: I abstain.

Senator Denis: I abstain.

The Deputy Chairman: Motion carried.
We shall now hear from Mr. Corner.

Mr. Corner: I would suggest that Mr. Cooper start by highlighting the more important parts of this bill.

Mr. G. M. Cooper, General Counsel, (Canadian National Railways: Mr. Chairman, I thank you for your words of welcome to Mr. Corner and me, as well as to the officers from Air Canada. Having listened to the discussion, I should like to say that we are at the disposal of the committee. It is probable that we shall be able to explain many of those matters which concern honourable senators. We are prepared to make an honest try, to the best of our ability.

In the case of past bills, it has been customary to go through a synopsis of the structure of the bill and indicate why the various provisions are included. If the committee so desires, I will do that; otherwise, we remain at the disposal of the committee.

The Deputy Chairman: Is that agreeable?

Mr. Cooper: My remarks can be interrupted at any time.

Senator Sparrow: I think that procedure would be wise.

Hon. Senators: Agreed.

Mr. Cooper: Stating the obvious, the bill deals with a number of financial matters concerning Canadian National Railways and Air Canada related to the calendar year 1973 and the first half of 1974. It very closely resembles similar bills of other years.

Its main aspects, as I see them, concern a number of clauses respecting capital expenditures and commitments of Canadian National and others related to the sources of money required for those expenditures.

It is essentially a financing bill, dealing, as the title suggests, with the provision of moneys to meet capital expenditures, largely moneys which CN itself generates.

Neither Mr. Corner nor I have seen yesterday's Senate *Hansard*, but it would appear that certain statements outlining the sources and application of CN funds for the years 1971 and 1972 were mentioned.

The bill really relates to those sources of funds, being largely internally generated.

There are also authorities in the bill for both government loans to Air Canada and/or government guarantees of obligations that might be issued by Air Canada.

There are authorities to advance moneys to either company on operating account if needed to meet seasonal or annual income deficiencies of revenues, and there is a provision related to the Canadian National Railways Refunding Act of 1955.

Now, looking at those items in order, clause 1 is merely the short title of the bill, for ease of reference; and clause 2 provides the usual and convenient definitions.

The Deputy Chairman: I am sorry to interrupt you, Mr. Cooper, but when you speak about refunding, are you referring to preferred shares?

Mr. Cooper: No, sir, this is to provide for the situation where obligations of the company mature. Because Canadian National is not permitted to have a surplus account, it does not have the funds to pay debt securities as they mature. In very large part they are refunded by the issuance of substituted securities of either equal or lesser amount.

In some cases a portion of the loan may be retired by application of available funds. Then we would issue substituted securities or obtain temporary loans from the Minister of Finance to pay the remainder of the maturing issue.

Subclause (1) of clause 3 summarizes Canadian National's estimated requirements for capital commitments and expenditures for 1973 and the first half of 1974. Paragraph (a) of clause 3(1) relates to 1973; paragraph (b) relates to expenditures in the first half of 1974; and paragraph (c) relates to commitments in the first half of 1974, which would become payable only after 1973.

Clause 3(2) authorizes Canadian National, with the approval of the Governor in Council, to borrow moneys in respect of branch lines construction only, save that if money had previously been borrowed from the minister for this purpose, the company might then borrow money from the public to repay the minister. However, the ultimate purpose of the borrowing power here is restricted to branch line construction by Canadian National.

The remainder of clause 3 governs the inclusion and reporting of various amounts in annual reports of Canadian National; that is, it controls the content of our annual reports for ongoing years.

Clause 4 of the bill gives Canadian National, again subject to the approval of the Governor in Council, the authority to issue certain securities to provide moneys relating to the borrowing power to which I previously referred. Clause 4 limits that authority to $21 million, which is the total of the two amounts found in clause 3(1)(a) and (b), $13 million and $8 million, respectively. So the authority to issue securities under clause 4 is limited to the borrowing related to branch lines.

Clause 4(2) makes mandatory the application of certain internal accruals—depreciation and debt discount amortization—to capital expenditures.

Clause 5 empowers the Governor in Council to guarantee the securities to which I previously referred. And

clause 6 governs the receipt and handling of the proceeds of sales of any such securities.

Clauses 1 to 6 relate to the Canadian National Railways System only.

Clause 7 relates to Air Canada only. Clause 7 provides, alternatively, for the Minister of Finance to make loans to Air Canada—as covered in subclauses (1) and (2)—or for the government to guarantee Air Canada securities, or a combination of both, related always to the time periods specified in the clause.

Clause 7(3)(a) 7 covers the familiar period of 1973 and the first half of 1974; and clause 7(3)(b), having a more unusual specific period, relates to the financing of the Rolls Royce transaction, to which Senator Benidickson referred.

Clause 7(4) limits the maximum amount of government loans and guarantees with respect to the transactions just described.

Subclause (5) of clause 7, in effect, says that the limitations in clause 7(4) do not preclude borrowings to the extent that the public borrowings are required to repay government loans; that is, there might be a temporary overlapping while the money was flowing from the public issue back to the Minister of Finance. But the ultimate limitation is not disturbed by that.

Subclauses (6) and (7) of clause 7 relate to the handling of the funds obtained by Air Canada in the case of a public issue guaranteed by the government.

Clause 8 of the bill covers the technical aspects relating to the signing and effect of government guarantees in respect of either Air Canada or Canadian National borrowings.

Senator Desruisseaux: Mr. Chairman, I wonder if I might be permitted a question at this time?

The Deputy Chairman: Yes, Senator Desruisseaux.

Senator Desruisseaux: Are the Air Canada guaranteeing arrangements set out in Bill C-5 something new for Air Canada, or was this done in the past?

Mr. Cooper: The government guaranteeing of Air Canada borrowing?

Senator Desruisseaux: Yes.

Mr. Cooper: This has been in identical form in the previous two or three acts, senator. Prior to that time, the practice was that Canadian National would borrow moneys to meet Air Canada requirements and then funnel it to Air Canada. So that even in that case the government guarantee was contempleted, although it would attach to Canadian National's borrowing rather than Air Canada's borrowing. This is a longstanding practice, and it has been in this exact form, I would say, in the last two or three acts.

Clause 9 is the alternative to clause 4. I am not sure why they are so widely separated, but they are. Just as under clause 4 Canadian National might make public borrowings for the purpose of financing branch lines, so under clause 9 the Minister of Finance might lend them moneys with the same limitations and with, as in clause 4(3), the same sort of provision allowing a temporary overlap without violation of the $21 million ceiling.

Clause 10, which relates only to Canadian National, recognizes the family structure of our system. The Canadian National Railway Company, which is described here as the National Company, is the focal point of the borrowings provided for in this bill, but to the extent that the moneys are required for purposes of affiliated companies, such moneys may be applied to those purposes.

Clauses 11 and 12 of the bill are similar, except that clause 11 refers to Canadian National and clause 12 to Air Canada. These two sections provide authority for the Minister of Finance to make accountable advances to the respective companies in the event at any time during the year their revenues are insufficient to pay their operating and income charges. These advances must be repaid if the funds are sufficient; otherwise there would have to be a deficit appropriation to clear the balance.

Senator Desruisseaux: When you refer to affiliated companies, do you include all subsidiary companies in that definition?

Mr. Cooper: I was really being a little inexact in my language there. The reference is really to other companies and railways comprised in the National System, as defined. These are all controlled companies, and affiliated in the sense of actual presence of control, not of minor investment.

The Deputy Chairman: You will find those companies in the annual report.

Mr. Corner: Yes, on page 28.

Senator Desruisseaux: Page 41 of the 1972 report.

Mr. Cooper: That really is the group.

Clause 13 literally extends, through 1972 and 1973, the application of a portion of the Canadian National Railways Capital Revision Act. That is the section providing for the issuance and purchase by the Minister of Finance of preference shares of Canadian National Railways company.

Senator Riley: Those preference shares being purchased by the minister.

Mr. Cooper: By the Minister of Finance. All of the issued preference shares are held by the Minister of Finance.

Senator Riley: Perhaps I might interject here. What is the procedure for getting permission for the issue of debentures sold to the public?

Mr. Cooper: There would be a number of procedures. In the Canadian National Railways Act there is authority to borrow. There is in this bill authority to borrow with or without government guarantee, and in certain branch line acts there is the same sort of provision, also in the Canadian National Railways Refunding Act. I think common to all of the guaranteed issues the procedure is the requirement of an order in council, and that the terms and conditions, the rates of interest and so on, be approved by the Governor in Council.

Senator Riley: When the investor is offered a bond is he given any kind of prospectus?

Mr. Corner: We have not had an issue in which we have borrowed from the public since 1960.

Senator Riley: I am asking what the procedure is. If I, as an investor, am interested in purchasing a CN bond—

Mr. Cooper: A new issue?

Senator Riley: A new issue—am I entitled to a prospectus? If so, what does that prospectus contain, and what protection do I, as an investor, have with respect to the full, true and plain disclosure in respect of distribution? Is there a consolidated balance sheet contained in that prospectus, and does that consolidated balance sheet contain an up-to-date financial picture of the railways at the time it is issuing these bonds, at least prior to the expiration of three months beforehand? Is there not a comfort letter, and is that not signed by the auditors? Is there not a comfort letter from the auditors accompanying such a prospectus, or whatever you may call it under these circumstances?

Mr. Cooper: When we say there is a prospectus, we are now talking back at least 15 years to the time of the last public issue, when the requirements of those days would have been met.

Senator Riley: You are anticipating today that you may have to issue debentures.

Mr. Cooper: The possibility, yes.

Senator Riley: If you do, are your procedures set down? What information will the investor get? Surely, you have gone into that.

Mr. Cooper: In terms of a comfort letter, one of the nicest would be the guarantee of the Government of Canada that is endorsed on the bond.

The Deputy Chairman: But what about when they are not guaranteed by the government?

Senator Riley: That is just it.

The Deputy Chairman: That is what we are asking about.

Senator Riley: Yes.

Mr. Cooper: I do not think we would follow that route. I think we would want to participate in a Government of Canada issue, and in so doing minimize the interest cost to the company.

Senator Riley: You mean you would prefer to go to the minister and obtain the loan?

Mr. Corner: No, not necessarily that way, but to participate in a Government of Canada issue.

Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel: In other words, guaranteed.

Mr. Cooper: Direct Government of Canada issue.

Senator Riley: You have the authority to go directly to the public in some instances under this bill.

Mr. Corner: We do.

Senator Riley: I would like to know what protection the investor has in respect to full, plain and true disclosure, and a consolidated balance sheet, say a letter from your solicitor.

Mr. Corner: We have to do all that.

Senator Riley: You do do all that?

Mr. Corner: We have to.

Mr. Cooper: I am now casting my mind back about 20 to 25 years. In any public issue that I can remember Canadian National having been involved in, counsel for the investors had to be satisfied before any money was forthcoming, so that as far as having an opinion of counsel was concerned there would be an opinion of the company's counsel and an opinion of counsel for the investors.

Senator Riley: An independent counsel?

Mr. Cooper: Yes.

Senator Riley: If you issue non-guaranteed debentures and what may be required under the Securities Act as a prospectus, what approval do you get of that prospectus, brochure, or whatever it is that you might issue? Do you have to go to the C.T.C. for approval? Do you have to go to the minister to get an order in council?

Mr. Cooper: I do not believe we have to go to the minister to get an order in council if he is not going to guaranteee our issue.

Senator Riley: Then must you go to the CTC?

Mr. Cooper: I think not, no.

Mr. Corner: No.

Senator Riley: Then you can issue a prospectus and there is no guarantee to the public that there is full, plain and true disclosure.

Senator Benidickson: You must provide whatever the securities authorities of the provinces or in the United States decree.

Senator Sparrow: Are you subject to provincial securities acts?

Mr. Cooper: I would say, yes.

Senator Sparrow: Are you considered to be a public corporation, in that sense?

Mr. Cooper: You might say we live in the province. The province has not jurisdiction over the manner in which we build or operate the railway, but we are taxpayers, we drive on the proper side of the road and we must comply with the general laws of the province.

Senator Sparrow: Are you subject to the securities commission of any province in Canada?

Mr. Cooper: I would say, yes. Now, I have to say I personally have not researched that, because we have not come up against the problem for such a long time and the laws have all changed since we did, when I was quite junior.

The Deputy Chairman: When was the last public issue? You have said it was 20 years ago?

Mr. Cooper: I think it was, and I also believe that at that time our borrowing agency was the Bank of Canada. So that the last issue arranged by the company must have been in the early 1950s. Now, I am reaching far back in my memory.

Mr. Corner: Yes, it was 1954.

Mr. Cooper: Even though the 1954 issue might well have been a Canadian National issue, it was handled by the Bank of Canada as our fiscal agency.

Senator Riley: Surely, in drafting this act you must have anticipated procedures which would have to be followed in order to protect the purchaser, the investor in purchasing your bonds if they were not guaranteed by the government. You even must have anticipated that you must pick out the home jurisdiction in one of the provinces in which the prospectus, or whatever you use for that issue, would be approved. I do not know, but I presume it would be a form of prospectus, and you would have to adopt certain procedures which would at least be akin to, for instance, the provisions of the Ontario Securities Act for protection of the investor.

The Deputy Chairman: In a case such as this, Senator Riley, I am no expert—

Senator Riley: Neither am I. I am just asking questions.

The Deputy Chairman: —but it is a crown corporation, and even if the loan is not guaranteed by the government, is the government not indirectly responsible for it? I do not know.

Senator Riley: The government would be responsible for it if it went sour, or they could not float or redeem the loans. In that event they would return to the government.

Mr. Corner: The government is our shareholder, yes.

Senator Langlois: Have you ever heard of a crown corporation being bankrupt?

The Deputy Chairman: I think the government does indirectly guarantee it sufficiently.

Senator Riley: From what I heard of the speeches in the house in criticism, there has perhaps not been full, plain and true disclosure of the finances of the CNR in the past. A question was raised yesterday with respect to these auditors not having signed the report, and I am simply speaking from the standpoint of the private investor. What protection will he have in purchasing bonds, and can he be deceived? I do not accuse the CNR of contemplating deceiving the public. Nevertheless, I would say those safeguards should be incorporated in the information that is provided to the investor before he purchases.

Mr. Corner: I wonder if I could say that it has been our practice and policy, of course, to make full disclosure of financial transactions. We have seen in the past published statements accompanied by the certification of independent government auditors. You also know that in 1972 we had to table our annual report without that accompanying government auditors' certificate. That is not to say, however, that we in CN did not have certification from a firm of auditors. For that year we had the firm of Peat, Marwick, Mitchell as consulting accountants certify our statements, and certainly we satisfied them, as independent auditors, as to full disclosure of what took place financially in that year. Also, for 1973 we have the same certification, except it is on a joint consulting accountants' and auditing basis. We have two firms involved in 1973, Peat, Marwick, Mitchell and Coopers & Lybrand.

Senator Riley: I am referring to practical instances, and perhaps I am being picayune in this. What about CNTL, Canadian National Transportation Limited? I was told by members of the board of CNR that this was an arm, a separate entity. I found out, however, through subsequent questioning, that CNTL actually is a separate company which operates for Canadian Express.

Canadian National Express, a division of CNR, solicits the business and bills the shippers. The waybills and probills are all CN Express, yet at the end of the year CNTL submits the list of its expenditures, I suppose less depreciation on their equipment, to CNE or, perhaps, they bill them for their share of the depreciation on their equipment, and that is all there is to it. It does not operate as an independent company or an independent corporation at all. In my opinion, it is a device which is used by CNR, through CN Express, to carry on its highway transportation operation. I was very confused about it all.

Then I discovered later that CNTL has quite considerable assets in other parts of Canada, yet when operating at least in the Atlantic provinces they profess to having no assets. This is something that, when you return before this committee in the future, I would like to be informed of. What is it all about?

Another thing: Is CNTL, as an operating arm for CN Express, collecting subsidies under the Atlantic provinces Freight Assistance Act? If it is, and if CN can show losses there at the end of the year, can they return to the government and request a subsidy to cover those losses? Can they cut rates to the detriment of independent highway transport operators, collect the subsidy and then go back to the government and recover their losses?

This is what I mean when I ask: Do we receive full, plain and true disclosure in respect to the borrowings of Canadian National?

Mr. Corner: We do, senator. Let me say that CNTL is a wholly-owned subsidiary of Canadian National Railway Company.

Senator Riley: With the employees of CN Express operating it.

Mr. Corner: And, further, that CNTL is the holding company for various trucking companies.

Senator Riley: Eastern and others?

Mr. Corner: Yes, and the statements of all those companies, including the results of CNTL, are consolidated in our system financial statements. So, when we speak of a deficit for the system, it would reflect any deficit of CNTL or any profit or loss of a trucking company. All that is part of our system.

Senator Riley: You have not answered my question. Does CNTL, which operates supposedly as an independent company and turns in its cost accounts to CNR at the end of each year, now receive at 17½ per cent subsidy on highway transportation within the Atlantic region, so-called, extending throughout the Atlantic provinces? Does it receive any subsidy, would it be able to lower the rates in competition with other transport carriers, and if it suffers a loss, could not CNR go to the government to recover that loss? I know that you may not be able to answer that question now, but I would like to have an answer some time in the future.

You may not be getting the subsidy, but I know it was the intention of CNR to get the subsidy under the Atlantic provinces Freight Assistance Act. The same could apply to the freight moving west of the St. Lawrence.

Mr. Corner: I have just been speaking to Mr. Cooper. We only obtain a subsidy in connection with the movement of express, to the extent that it is given to trucking companies and moves on the highways.

Senator Riley: You say "express." Does that encompass truckload lots or only LTL freight?

Mr. Corner: I would say less than—

Senator Riley: It would include truckload lots as well?

Mr. Corner: We are not too clear on that.

Senator Riley: CNTL has a general freight licence applicable to most of the highways in Nova Scotia and Prince Edward Island—not in Newfoundland, but in Prince Edward Island. The big danger, as I see it, is that through this device independent truckers may be made to suffer as a result of the possibility, if there is a loophole, whereby CNTL can collect a subsidy even though it is nothing more than an arm of CN Express.

The operators of CNTL are employees of Canadian National Express. Canadian National Express solicits bills and uses the probills of CN Express to operate as a carrier of general freight under the name of CNTL. I will not ask you to go into detail here, but I would like to have that information in the future.

The Deputy Chairman: Mr. Cooper, you may take that as notice and provide the information later.

Senator Langlois: I assume the honourable senator is not insisting on having this information immediately.

Senator Riley: No, but I would like to have it at some time in the future.

Mr. Cooper: I am afraid we do not have all the details, but I am certain there is no unfair competition—

Senator Riley: But there could be.

Mr. Cooper: —by CNTL based on its relation with the railway company.

Senator Riley: With the express division of the railway company.

Mr. Cooper: The term "express" has rather faded in the railways. We deal in small package trade.

Senator Riley: But CNTL will take a truckload lot of general freight. Canadian National Express bills for that. It reimburses CNTL for the wages of the drivers, management, right through the piece.

Again, I do not want to hold you up, as there may be things that you wish to say now. It is something that I would like to know in the future, when the committee meets again.

The Deputy Chairman: Mr. Cooper, you may take that as notice and provide the information. Is that agreed?

Hon. Senators: Agreed.

The Deputy Chairman: Please continue, Mr. Cooper.

Mr. Cooper: I have said all that I intended to say on clause 13, unless there are any questions.

Clause 14 relates to the appointment of auditors. In this instance it covers the years 1972 through 1978.

Canadian National's auditors are appointed by Parliament, as required by the CNR Act, and Air Canada is required, by its statute, to employ the same auditors.

I referred to clause 15 previously as being a housekeeping one. The refunding aspect of maturing securities is provided for in the Canadian National Railways Refunding Act. The same act has been employed since 1955.

Some 10 years ago the maximum amount of substituted securities that might be issued was increased. As that authority is used, it becomes exhausted, and therefore, either by passage of a new act or an increase in the authority embodied in the old act, it has to be increased. The Department of Finance has clearly decided that now is the time for another such increase.

Clause 16 merely removes from the 1970 Financing and Guarantee Act two provisions related to the Air Canada sterling notes which have been replaced in this act.

Due to the Rolls Royce bankruptcy, the provisions that were enacted in 1970 were no longer useful because of a problem with dates; and therefore they are to be re-enacted in this act. Clause 16 merely repeals from the prior act the corresponding provisions to ensure that there is no dupplication of authority. The authority in this act replaces, and does not increase, the authority of the 1970 act.

Senator Benidickson: Is this connected with the Rolls Royce business?

Mr. Cooper: Those sterling notes relate to a Rolls Royce purchase by Air Canada.

Senator Langlois: That is the $13 million?

Mr. Cooper: Yes.

Senator Langlois: Financed through Lazard & Frère Ltd. of London?

Mr. Cooper: Correct.

The Deputy Chairman: Thank you, Mr. Cooper.

Would honourable senators like to ask questions of the CNR representatives? Or, perhaps, the representatives of Air Canada have an opening statement which they wish to make in order that we might have the whole picture.

Senator Desruisseaux: Mr. Chairman, before we proceed with that, I would like to ask Mr. Cooper a few more questions. The first concerns the procedure being followed in connection with accounting. There is a list here of some 40 companies which are either subsidiaries or affiliated companies. Are these companies also audited through the process of the general audit?

Mr. Cooper: Perhaps I might redirect your question to the Vice-President, Finance, senator.

Mr. Corner: Yes, they are, senator.

Senator Desruisseaux: Each one of those companies for each year?

Mr. Corner: They are audited within the context of the auditors satisfying themselves as auditors that what is set out in the financial statements as being the operating results for the year is fairly stated, and that the financial position shown at the end of the year is fairly stated.

Senator Desruisseaux: So that if a taxpayer, for whatever reason, wished to see the financial statement of any one of those companies for any particular year, he could obtain it?

Mr. Corner: Some of our companies have what we refer to as a certified audit. In other words, there is a particular company. That holds true for just a certain number of our companies, however. Most would not have a certified audit.

Senator Riley: If I may be permitted to make a comment on this, Mr. Chairman, when the CNTL appeared on an application for a general freight licence in Newfoundland, there was considerable reluctance on the part of the CNR to produce a full financial statement of CNTL. They also appeared before the Motor Carrier Board in New Brunswick, on which occasion there was also reluctance to produce a full financial statement of CNTL. What the reason for that reluctance was, I do not know. We finally got a financial statement, but there was some reluctance. That indicates to me that the CNR is reluctant to provide financial statements even before administrative tribunals.

Mr. Corner: But they did produce it?

Senator Riley: They did, but with some reluctance. The board in Newfoundland insisted on it, and notwithstanding the fact that the board in Newfoundland insisted on it, they did not have it available when they appeared before the Motor Carrier Board in New Brunswick. We had to ask them to produce it. Normally, a company appearing before a board will produce and file its financial statement. If my memory serves me correctly, it is a requirement to do so.

The Deputy Chairman: Perhaps we now could hear from the representatives of Air Canada.

Mr. Claude I. Taylor, Vice-President, Public Affairs, Air Canada: Honourable senators, we are very grateful for the opportunity of appearing before you this morning. Accompanying me is Mr. John P. Sheehan, our Controller.

I believe Mr. Cooper has already covered the intent of the purposes of the bill quite adequately in terms of Air Canada's position within the total bill and its requirements from the bill. I do not believe it would serve any useful purpose for me to repeat what Mr. Cooper has said, so we stand ready to answer, to the best of our ability, any questions that honourable senators may have.

Senator Desruisseaux: I have not seen one, but I am wondering whether you have issued an unaudited statement for the year 1973.

Mr. Taylor: No, we have not, senator. As is the case with CNR, we have consultative accountants. We are now in the process of finalizing our 1973 accounts so that they can be tabled in Parliament as in past years. We have not as yet issued our formal 1973 accounts.

Senator Desruisseaux: You mean the tabling of the public accounts?

Mr. Taylor: That is right.

Senator Desruisseaux: That will take place when, approximately?

Mr. Taylor: Well, it should take place almost any time now. We should like to be able to include in our 1973 accounts a copy of the auditors' certificate, which we will be unable to include unless this bill is passed. Otherwise, we will have to do as we did last year and eventually issue an unaudited financial statement.

Senator Desruisseaux: As you have heard, there is a difference of opinion among committee members as to whether we should first see the financial statement before coming to any conclusion with respect to this bill.

Mr. Taylor: Yes, I have taken note of the comments in that regard.

Senator Desruisseaux: What is your point of view in that regard?

Senator Benidickson: Well, I do not think Mr. Taylor should be asked to answer that question.

The Deputy Chairman: I agree.

Senator Benidickson: It is now April 10, Mr. Taylor. Is there an uncertified audited financial statement for Air Canada's operations available for 1973?

Mr. Taylor: It has not been made available publicly, senator.

Senator Benidickson: I realize that. I know you do not want fancy bound copies of your financial statement distributed widely until it has the auditors' certificate. How-

ever, you have more or less completed your books and your balance sheet, and I am wondering if we might be presented with a preliminary statement with respect to operations in 1973.

Mr. Taylor: I would have to be guided by the chair and the committee, as well as the representatives of the CNR, senator, as to whether or not we should table a statement at this time. It is true that internally we do have statements. We have monthly statements.

Senator Benidickson: As Senator Langlois has already said, there is a continuing audit in such large corporations. It cannot all be done after the end of the fiscal year.

Senator Flynn: The auditors have been working all year. The only thing they lack now is the authority to sign the certificate.

Mr. Taylor: That is correct, senator.

Senator Sparrow: I understand that the auditors' certificate is not available, but can you make the financial statement available to this committee?

The Deputy Chairman: I am not sure whether the financial statements of the two corporations could be presented to the committee.

Mr. Cooper: I am not certain whether Mr. Corner has any figures that he could produce, but there is a reluctance on the part of both companies, I think, to do so. There is some indiscretion in releasing the figures in a public forum when our obligation is to present the report to the Minister of Transport to table in the house.

Senator Sparrow: Mr. Chairman, perhaps the committee is not prepared to pass a bill authorizing auditors unless we are satisfied with the auditors, and the only way we can satisfy ourselves as to the auditors is by seeing the statement.

Mr. Cooper: We are in the hands of the committee.

The Deputy Chairman: Perhaps the representative of the Department of Finance can tell us whether or not we can get copies of the unaudited statements.

Mr. M. B. Foster, Director of Government Finance, Department of Finance: I think Mr. Cooper has stated the situation correctly, in that the obligation on the part of the companies is to table their reports with the Minister of Transport. I hardly see how they can present the reports before the committee when they are required by act of Parliament to first present them to the Minister of Transport.

Senator Benidickson: Before we can report on the bill, Mr. Chairman, we should hear from the Minister of Transport in connection with that and other things.

Clause 14 of the bill deals with the audit, and it is one of the clauses that certainly is not identical in form to past years', even with respect to one date.

Mr. Cooper: Substantially it serves the same purpose.

Senator Benidickson: It may be substantially the same, but unlike other years it refers not only to auditors for a single year or to a five-year period in future. We are giving some authority for 1972 and 1973. Is it being said that until we provide this appointment of auditors for 1973 you cannot produce a statement? We received a statement for 1972.

Mr. Cooper: You are correct, you did.

Senator Benidickson: Notwithstanding the fact that we did not have any legislation passed that particularly authorized an auditor for 1972.

Mr. Cooper: That is correct. There could not be an auditors' report as required, because the auditors had not been appointed by Parliament.

Senator Benidickson: But there was a CNR report unaudited.

Mr. Corner: That is correct, and an Air Canada report.

Senator Benidickson: My feeling is that before we complete our studies at the moment we should even have an unaudited statement for 1973.

The Deputy Chairman: Was this made available to the members of the committee of the House of Commons? I do not know.

Senator Flynn: It was probably given to the minister.

The Deputy Chairman: That I do not know. I think we should inquire and find out exactly.

Senator Flynn: Or wait.

The Deputy Chairman: Or wait.

Mr. Foster: This is a chicken-and-egg situation. There cannot be an audited statement until the bill has been passed.

Senator Benidickson: Why not?

Mr. Foster: Because Parliament requires to appoint the auditors.

Senator Benidickson: But we did not pass anything with regard to 1972.

Mr. Foster: No, sir.

Senator Benidickson: But we got a statement for 1972 for both Air Canada and CNR.

Mr. Foster: An unaudited statement.

Senator Benidickson: Yes.

Mr. Foster: Had this bill been presented, shall we say, last fall, there could not have been an audited statement, or even an unaudited statement, for 1973, because the year would not have been over.

Senator Benidickson: I agree, but the year is now well over, and there must be figures available that would give us a picture of operations for 1973.

Senator Flynn: Uncertified.

The Deputy Chairman: Uncertified, yes. I think we should inquire about that.

Senator Benidickson: Perhaps uncertified by the auditors.

Senator Flynn: Not signed, not certified.

The Deputy Chairman: Not certified. I think we will inquire about it and let you know later. Are there any other questions?

Senator McElman: Before we leave this point, there is one rather important question. Has an unaudited statement or an uncertified statement been passed to the minister at this point in time for tabling?

Mr. Corner: No, it has not.

Senator Flynn: For his own information.

The Deputy Chairman: What about the Minister of Finance?

Mr. Foster: No, sir.

Senator McElman: In that case, what you are dealing with here is a question of policy, is it not?

The Deputy Chairman: Yes.

Senator McElman: If the minister chooses to get an uncertified statement and table it, it will then be available to Parliament, including this committee. If he does not choose to get an uncertified statement and table it, it will not be available to Parliament or to this committee. Is that not the situation?

The Deputy Chairman: I would think so.

Senator Flynn: It depends upon whether he gets it without tabling it.

Senator Benidickson: I am pointing out that we got a useful statement for 1972.

Senator McElman: Of course you did.

Senator Benidickson: I am hoping that before we report this bill, which deals basically with operations in 1973, we shall get some kind of statement of operations for 1973, even though it is not certified by an auditor.

Senator McElman: I understand that.

The Deputy Chairman: We will try to find out exactly what we can get.

Senator McElman: Those statements for earlier years were only obtained if the government decided that there would be tabled an uncertified statement. Apparently that has not been done.

Senator Benidickson: Maybe they have not received an uncertified statement for 1973.

Senator McElman: I asked, and we were told they had not.

Mr. Corner: I said we have not sent an unaudited statement to the Minister of Transport.

Senator Benidickson: Oh!

Senator Riley: I cannot understand the reason for the delay. CP Investments goes before the public from time to time with completely audited statements when they issue a prospectus. CP Investments, which includes the subsidiary CPR, do not seem to have any difficulties or delays in issuing completely audited financial statements.

The Deputy Chairman: Section 40 of the 1955 act says:

> The annual reports of the Board of Directors and auditors, respectively, shall be submitted to Parliament through the Minister of Transport.

Senator Flynn: Does it say "the audited statement" or "the report"?

The Deputy Chairman: It refers to "the annual reports of the board of directors and auditors, respectively," which "shall be submitted to Parliament through the Minister of Transport."

Senator Desruisseaux: Is that yearly?

The Deputy Chairman: I suppose it is yearly, because it says that

> The annual reports of the Board of Directors and auditors, respectively, shall be submitted to Parliament through the Minister of Transport.

Senator Flynn: It should be noted that even if there is no audited report, that should not deprive Parliament of getting this information. There is no obstacle to Parliament getting an unaudited statement under that section.

The Deputy Chairman: That may be, but I am not too sure. I think we should inquire about it and find out exactly.

Senator Sparrow: Is what Senator Benidickson said about the 1972 statement being presented to Parliament and this committee true?

Senator Benidickson: We all got the formal 1972 printed statement.

Senator Sparrow: Not accompanied by an auditors' certification, is that correct?

Mr. Corner: That is correct. On the other hand, once the government auditors are appointed for 1972 they are required to report to Parliament.

Senator Flynn: Of course.

Senator Sparrow: Let me make it clear in my mind. The question is: Why is this 1973 statement not being made available on the same basis? Is that the question?

Mr. Corner: No, we are anticipating it will be more on the 1971 basis.

Senator Flynn: You would prefer to have your report printed with the auditors' certificate; there is no doubt about that.

Mr. Corner: That is right.

Senator Flynn: But it could be available at this time.

Mr. Corner: That is correct.

The Deputy Chairman: Through the minister.

Senator Flynn: That does not mean Parliament would not get it, because the minister does not get it. "Through the minister" means only that that is the channel to reach Parliament; that is all. There is no obligation to go through the minister. If the minister did not want to table it, I am quite sure Parliament could obtain it.

The Deputy Chairman: We will see.

Senator Riley: I asked a question a while ago and did not get any response. What is the reason for the delay? Why is it that CP Investments, which is a much wider complex of companies, and includes CPR, are able to provide to the public up-to-date financial statements every time they are looking for $100 million or $50 million? They do not seem to have any difficulty in providing the securities people across the country with all this information. Why cannot Parliament get it from the CNR?

Senator Langlois: CP appoints its own auditors; they do not have to come to Parliament for that. That is the reason for the delay.

Senator Riley: Does CN have to come to Parliament every year for their auditors?

Senator Flynn: No.

Senator Benidickson: It is a continuous audit; they have not held up the audit.

The Deputy Chairman: We will inquire into it and find out.

Are there further questions? We will start with CNR.

Senator Benidickson: Mr. Chairman, I would like to get as an appendix, when submitted, a statement of the assets and liabilities before the Capital Revision Act of 1952 and a copy of the statement for 1973. Can you provide that without an auditors' certificate for 1973?

Mr. Cooper: This is the question, really, that has just been discussed.

Senator Benidickson: In essence it is, yes. I really wish to know what has been the growth in the holdings of the 4 per cent preferred stock since the Capital Revision Act of 1952. In the report of 1952, which I believe I have before me, you show that the 4 per cent preferred shares, at $1 each presumably, totalled $754,871,945. In this 1972 statement of assets and liabilities...

Mr. Corner: It is on page 39.

Senator Benidickson: Page 39, thank you. That has increased to what?

Mr. Corner: $1.235 billion.

Senator Benidickson: Yes. Without an auditors' statement can you inform us as to the increase in the 4 per cent preferred stock as a liability at the end of 1973?

Mr. Corner: We have not been able to issue any preferred stock.

Senator Benidickson: Until this bill is passed?

Mr. Corner: And we never issued any preferred stock in the year 1972. In other words, the figure you see here really was the same as at the end of 1971.

Senator Benidickson: It is a repeat of the 1971 figure?

Mr. Corner: It is.

Senator Benidickson: I did not look at the end of 1971, but did look at 1952 and compared it with 1972.

You made reference when you pointed out the purposes of clause 13, Mr. Cooper, to the revised statutes of 1952. Do you have the actual wording of the section when it says "notwithstanding"?

Mr. Cooper: Yes, I do, senator.

Senator Benidickson: Could you put that on the record, please?

Mr. Cooper: In the 1952 statute it occupies the major part of a page.

Senator Benidickson: It is very long, is it?

Mr. Cooper: Senator Benidickson, it really extends over half a page in the statutes.

Senator Benidickson: It is, indeed, quite lengthy, yes.

Mr. Cooper: And the follow-up section, 7.

Senator Benidickson: Could you summarize its purport?

Mr. Cooper: I will try. As a lawyer, I would hate to suggest that any one of its words is unnecessary.

Section 6 of the Capital Revision Act provides that the minister shall in respect of each year purchase at par from the company shares of its 4 per cent preferred stock to the extent of 3 per cent of the gross revenues of the National System in that year.

Section 6(2) provides for interim purchases through the year to be adjusted at the year end. The section further provides that the amounts so received by the company shall be used to meet expenditures of the National System for additions and betterments that have been included in an annual budget of the system.

I think essentially that is what it is all about.

Senator Benidickson: The difficulty here is that in 1972 we did not pass legislation.

Mr. Cooper: Correct; there was no authority to extend this provision in respect of 1972, yes.

Senator Benidickson: In consequence of the failure to include a similar figure in the legislation in 1972, does your report for 1972 still reflect any necessary purchase of preferred shares for that year?

Mr. Cooper: No, because none took place.

Senator Benidickson: Did none take place because we did not have legislation?

Mr. Cooper: Yes.

Senator Benidickson: So you are asking now for the normal procedures to take place, for the government to

purchase these preferred shares, not only for one year, but for an additional year, 1972?

Mr. Corner: Correct.

Mr. Cooper: That is right.

The Deputy Chairman: What is the reason that approval must be granted each year for the purchase of the preferred shares?

Mr. Cooper: Because the duration of the Minister's duty to buy the shares was limited as to time, and unless it is extended the minister has neither the duty nor authority to buy these shares.

Senator Benidickson: And that is why the figure for outstanding 4 per cent preferred shares on December 31, 1971 is the same as it was on December 31, 1972.

Mr. Cooper: Yes, 1971 and 1972.

Senator Benidickson: Did the figures for 1971 and 1972 remain unchanged simply because we have yet to pass this authorization?

Mr. Corner: That is correct.

Senator Benidickson: If Parliament passes clause 13, what increase in the numbers of preferred shares would have been shown for December 31, 1972?

Mr. Corner: If Parliament had extended the authority, the 1972 amount here would have increased by approximately $40 million.

Senator Benidickson: And have you a calculation as to what the increase would be for 1973?

Mr. Corner: Yes, it is approximately $43 million.

Senator Benidickson: I do not know the number of this clause, but you referred to it earlier, with respect to the financing of branch lines. Some are provided for financially in this annual bill, if we have it annually, as has been the practice more often than not?

Mr. Cooper: Yes.

Senator Benidickson: How is that different from the special bills providing financing for CNR branch lines in Parliament itself?

Mr. Cooper: Perhaps I can reply to your question as follows: There is a special bill only if the branch line in question is over 20 miles in length.

Senator Benidickson: It was six miles, and I believe Senator Langlois explained that.

Senator Langlois: I explained that yesterday, yes.

Mr. Cooper: Therefore, for the branch lines of less than that length there would be no statute.

Senator Langlois: When was this change made from six miles to 20?

Mr. Cooper: In 1967, at the time of the passage of the National Transportation Act.

Senator Flynn: It was part of the great new policy.

Mr. Cooper: It was a much needed change, so far as the act is concerned.

The Deputy Chairman: It was mentioned in your speech, Senator Langlois.

Senator Langlois: Yes, I gave that explanation yesterday.

Mr. Cooper: We would not borrow twice in respect of the same branch line, if that is your concern.

Senator Benidickson: I had experience with the financing of branch lines and legislation in Parliament itself, and here in this bill is another type of authorization for financing branch lines.

Mr. Cooper: The budget as presented here is really all-embracing.

Senator Benidickson: It embraces both forms of authorization.

Mr. Corner: Except that all the lines here would be less than 20 miles.

The Deputy Chairman: Honourable senators, at this point we might adjourn, as agreed. The committee will adjourn until the call of the Chair, which may be in the week commencing April 22.

Gentlemen, on behalf of the committee, I thank you for helping us today. I extend to you and to all honourable senators best wishes for a happy Easter.

The committee adjourned.

Published under authority of the Senate by the Queen's Printer for Canada

Available from Information Canada, Ottawa, Canada.

SECOND SESSION—TWENTY-NINTH PARLIAMENT

1974

THE SENATE OF CANADA

PROCEEDINGS OF THE

STANDING SENATE COMMITTEE ON

TRANSPORT AND COMMUNICATIONS

The Honourable MAURICE BOURGET, *Deputy Chairman*

Issue No. 4

TUESDAY, APRIL 23, 1974

Second and Final Proceedings on Bill C-5, intituled:

An Act to authorize the provision of moneys to meet certain capital expenditures of the Canadian National Railways System and Air Canada for the period from the 1st day of January, 1973, to the 30th day of June, 1974, and to authorize the guarantee by Her Majesty of certain securities to be issued by the Canadian National Railway Company and certain debentures to be issued by Air Canada

---

REPORT OF THE COMMITTEE

(Witnesses and Appendices: — See Minutes of Proceedings)

27423—1

STANDING SENATE COMMITTEE ON TRANSPORT AND COMMUNICATIONS

The hon. J. Campbell Haig, *Chairman.*

The Honourable Senators:

Blois	Langlois
Bourget	Lawson
Burchill	*Martin
Denis	McElman
Eudes	Molgat
*Flynn	Petten
Forsey	Prowse
Fournier (*Madawaska-Restigouche*)	Riley
	Smith
Graham	Sparrow
Haig	van Roggen
	Welch—(22)

20 MEMBERS

(Quorum 5)

**Ex officio member*

Order of Reference

Extract from the Minutes of the Proceedings of the Senate, April 9, 1974:

Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Langlois, seconded by the Honourable Senator Denis, P.C., for the second reading of the Bill C-5, intituled: "An Act to authorize to provision of moneys to meet certain capital expenditures of the Canadian National Railways System and Air Canada for the period from the 1st day of January, 1973, to the 30th day of June, 1974, and to authorize the guarantee by Her Majesty of certain securities to be issued by the Canadian National Railway Company and certain debentures to be issued by Air Canada".

After debate, and—

The question being put on the motion, it was—
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Langlois moved, seconded by the Honourable Senator Martin, P.C., that the Bill be referred to the Standing Committee on Transport and Communications.

After debate, and—

The question being put on the motion, it was—
Resolved in the affirmative.

Robert Fortier,
Clerk of the Senate.

Minutes of Proceedings

April 23, 1974.
(6)

Pursuant to adjournment and notice the Standing Senate Committee on Transport and Communications met this day at 10:10 a.m.

Present: The Honourable Senators Bourget (*Deputy Chairman*), Denis, Flynn, Forsey, Fournier (*Madawaska-Restigouche*), Graham, Langlois, Martin, McElman, Molgat, Riley and Smith. (12)

Present, but not of the Committee: The Honourable Senators Asselin, Benidickson, Cameron, Gélinas, Grosart, McGrand and McIlraith. (7)

In attendance: Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

The Committee continued its examination of Bill C-5 intituled:

"An Act to authorize the provision of moneys to meet certain capital expenditures of the Canadian National Railways System and Air Canada for the period from the 1st day of January, 1973, to the 30th day of June, 1974, and to authorize the guarantee by Her Majesty of certain securities to be issued by the Canadian National Railway Company and certain debentures to be issued by Air Canada".

The following witnesses, representing Canadian National Railways, were heard in explanation of the Bill:

Mr. M. J. MacMillan, President,

Mr. W. R. Corner, Vice-President, Accounting.

On Motion duly put it was Resolved to print in this day's proceedings the "Balance Sheet of Canadian National Transportation Limited as at 31 December 1973" and the "Canadian National Transportation Limited, Income Statement" and "Statement of Retained Earnings for the Period Ending 31 December 1973". They are printed as Appendix "A".

It was suggested by the Honourable Senator Grosart that the Committee consider, at some future time, obtaining the services of Mr. M. J. MacMillan with the view of recommending to the Government and improved method of financing for Canadian National Railways.

On Motion of the Honourable Senator Benidickson it was Resolved to print in this day's proceedings the documents entitled "Consolidated Balance Sheet", "Consolidated Income Statement" and "Source and Application of Funds" all of which are for the year ended December 31, 1973 and are from the Interim Financial Statements for 1973 of Canadian National Railways. They are printed as *Appendix "B"*.

On Motion of the Honourable Senator Benidickson it was Resolved to print in this day's proceedings statements comparable to those appearing in Appendix "B" for the first full year after the coming into effect of the Capital Revision Act of 1952. These statements, which relate to the fiscal year 1952 are printed as *Appendix "C"*.

Mr. MacMillan, at the request of the Honourable Senator Benidickson, agreed to provide a statement enumerating the number and value of 4% Preferred Stock issued by Canadian National Railways each year from 1952 to 1973 inclusive. The statement, entitled "Canadian National Railways-Issues of 4% Preferred Stock 1952-1973" is printed as *Appendix "D"*.

The Honourable Senator Benidickson also requested from Mr. MacMillan a list of Deficit and Surplus figures of Canadian National Railways for the years 1952 to 1973. This information is printed as *Appendix "E"*.

At the request of the Honourable Senator Langlois, the witness provided a "Summary of the Refundings under the Canadian National Railways Refunding Act 1955", together with a list of the securities substituted under the said Act. This document provided by the Department of Finance, is printed as *Appendix "F"*.

A statement of "Shareholders' Equity of Canadian National Railways has been submitted and is printed as *Appendix "G"*.

A further financial statement enumerating the capital investment of the Government of Canada in the Canadian Government Railways is printed as *Appendix "H"*.

A tabulation of new moneys authorized by the various Financing and Guarantee Acts between 1952 and 1973 are printed as *Appendix "I"*.

At 12:40 p.m. the Committee adjourned until 3:30 p.m. this day.

* * * * * * * * * *

At 3:30 p.m. the Committee resumed.

Present: The Honourable Senators Bourget (*Deputy Chairman*), Eudes, Forsey, Fournier (*Madawaska-Restigouche*), Graham, Langlois, Martin, McElman, Riley, Smith and Sparrow. (11)

Present but not of the Committee: The Honourable Senators Argue, Asselin, Benidickson, Cameron, Desruisseaux, Duggan, Gélinas, Grosart, Lapointe, McIlraith and Molson. (11)

In attendance: Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

The following witnesses, representing Air Canada, were heard in explanation of the Bill:

Mr. Claude I. Taylor, Vice-President, Public Affairs;

Mr. Michael Cockrane, Vice-President, Finance.

On Motion of the Honourable Senator McElman it was Resolved to Report the said Bill without amendment.

On Motion of the Honourable Senator McElman it was Resolved to include in the Committee's Report a Recommendation relating to possible improvements in the method of financing for Canadian National Railways. The next of the Recommendation is included in the Report of the Committee.

On direction of the Chairman of the Committee the unaudited Financial Statements of Air Canada for 1973 are printed as *Appendix "J"* to this day's proceedings.

At 6:00 p.m. the Committee adjourned to the call of the Chairman.

ATTEST:

Denis Bouffard,

Clerk of the Committee.

Report of the Committee

Wednesday, April 24, 1974.

The Standing Senate Committee on Transport and Communications to which was referred Bill C-5, intituled: "An Act to authorize the provision of moneys to meet certain capital expenditures of the Canadian National Railways System and Air Canada for the period from the 1st day of January, 1973, to the 30th day of June, 1974, and to authorize the guarantee by Her Majesty of certain securities to be issued by the Canadian National Railway Company and certain debentures to be issued by Air Canada", has, in obedience to the order of reference of April 9, 1974, examined the said Bill and now reports the same without amendment.

The Committee is convinced that the Canadian National Railways Financing and Guarantee Acts should be revised as indicated by the evidence before the Committee in order to correct certain inherent anomalies and particularly to present the authorizations required in a form that will be more realistic and that it should be up-dated to facilitate its consideration by Parliament early in the year for which the authorizations are sought; and

That it should be authorized by the Senate to undertake a study for the purpose of devising ways and means whereby such legislation may be introduced in a more expeditious and satisfactory manner in the future.

Respectfully submitted,

Maurice Bourget,
Deputy Chairman.

The Standing Senate Committee on Transport and Communications

Evidence

Ottawa, Tuesday, April 23, 1974.

The Standing Senate Committee on Transport and Communications, to which was referred Bill C-5, to authorize the provision of moneys to meet certain capital expenditures of the Canadian National Railways System and Air Canada for the period from the 1st day of January, 1973, to the 30th day of June, 1974, and to authorize the guarantee by Her Majesty of certain securities to be issued by the Canadian National Railway Company and certain debentures to be issued by Air Canada, met this day at 10 a.m. to give further consideration to the bill.

Senator Maurice Bourget (*Deputy Chairman*) in the Chair.

The Deputy Chairman: Honourable senators, I think we have a quorum now and, unless there is objection taken by Senator Flynn, I do not have to count all the senators.

Honourable senators, as you know, we have before us for further consideration Bill C-5. We have with us today all the witnesses who appeared on the last occasion—Mr. Cooper, Mr. Corner, Mr. Taylor of Air Canada, and Mr. Sheehan, I think.

Also this morning we have the pleasure of having with us the President of Canadian National Railways, Mr. MacMillan, to whom I would like to extend a most hearty welcome.

Hon. Senators: Hear, hear.

The Deputy Chairman: Mr. MacMillan, do you have any comments to make before senators put questions?

Mr. M. J. MacMillan, President, Canadian National Railways: Mr. Chairman and honourable senators, I do not have an introductory statement in the normal form, primarily because from my reading of the evidence I see that an introductory statement was made at your meeting last week.

If I may—and I recognize I am impinging upon your generosity—I would like to make a short personal statement.

As some of you may know, I am about to retire—as a matter of fact, I will be retiring in about a week—and when I look back upon my appearances in Ottawa, I realize that I began my parliamentary committee appearances in the Senate. For a very long period of time, beginning about 35 years ago, I was a frequent visitor to the Senate and I piloted bills of this nature through the Senate committee for about 15 years. For personal and nostalgic reasons, I thought I would like to return here in my last week, so here I am.

It is always difficult to know what to say in terms of an introductory statement. I know that you have shown an interest in two or three matters. Historically, the Senate has always had an interest in the very broad gauge aspects of the operations of our companies.

Lacking a better vehicle, I thought I might say a few words about 1973. I should preface that by saying that in the normal historical pattern it would be 1973 that we would be talking about before you, because this bill is really a year old. What we used to do was to try to deal with the annual reports prior to the Easter recess—and they were the annual reports for the preceding year, not two years ago. As a consequence, the timing of the legislation was much more appropriate, in that we were dealing with current years when it was current before the House of Commons and the Senate.

In any event, last year was one of progress for the Canadian National, in spite of some, what I might call, grave difficulties. Our traffic volume was extremely high and we were moving very large amounts of traffic. We got ahead extremely well with all of this until we encountered the labour problem which developed in July and which continued through into September. Upon its resolution, we were then faced not only with the problem of dealing with enormous amounts of current traffic but also with the problem of trying to catch up with accumulations of traffic which had built up during the strike period. So we were very much behind the eight ball during the remainder of the year because of these two forces.

As if that was not bad enough, it was compounded by strikes in the plants of two car builders which had orders for us. We had anticipated delivery of this equipment but we did not receive it. So this combination of circumstances was very unfavourable.

Telecommunications and our non-rail activities continued to grow during the year, and the overall outlook at that time was still pretty good.

Had it not been for the labour unrest and the strike that flowed from it, I believe that in 1973 we would have finished in a profit position—it would not have been great, but probably of the order of $10 million; however, as a consequence of the loss of traffic we had anticipated, we lost gross revenue traffic of the order of $60 million, and our related expenditures decreased by about $30 million through this period, leaving us with a net loss flowing from the strike of something of the order of $30 million. That changed the budgeted profit of $10 million into an actual deficit of the order of $21 million.

I should have added that the net railway operating income in 1973 amounted to $25.7 million, which was the best since 1956, and that our gross operating profit was quite respectable—$48½ million, which was an improvement over 1972.

Prospects for 1974 look very good. As you know from what you have seen and heard, the traffic demand is still extremely high. There are enormous amounts of freight

traffic moving. We have a car shortage and everything that goes with it. The economy is buoyant, and this is really the yardstick upon which we measure our business. We think that, given a break, we may get into a black position in 1974.

Honourable senators, that is a superficial statement that I have made, and I recognize it as such, but I have made it really so that I may have an opportunity of saying something to you this morning.

The Deputy Chairman: Thank you very much, Mr. MacMillan. I would like to take this opportunity to say how much we regret seeing you go, but I hope that even if you do not come and visit the Senate as President of the CNR you will come here as a Canadian. We wish you good health and many, many happy years of retirement.

Senator Riley: I appreciate seeing this consolidated balance sheet as of December 31, 1973. There are one or two questions I would like to ask in respect to it, originating from the questions I was asking at the last meeting. I am interested in knowing about a balance sheet or a financial statement for some of the subsidiaries, particularly Canadian National Transportation, Limited and its association with Canadian National Express division of Canadian National Railways. Do you have available a balance sheet or a financial statement for Canadian National Transportation, Limited?

Mr. MacMillan: We have it for both 1972 and 1973. Which year were you particularly interested in, or were you interested in both?

Senator Riley: I am interested in both of them, actually. Probably the last one I saw was 1971.

Mr. MacMillan: I am told that the 1972 statement was filed in New Brunswick and Newfoundland.

Senator Riley: Then it is 1973 that I am interested in.

Mr. MacMillan: Yes. I am going to pass to you, senator, the Canadian National Transportation Limited balance sheet as of December 31, 1973, and attached to it is a supplementary document, the income statement for the period ending December 31, 1973.

The Deputy Chairman: Shall we have those tabled in these proceedings, honourable senators?

Hon. Senators: Agreed.

See Appendix "A"

Senator Benidickson: Mr. Chairman, I should point out that we felt at a disadvantage at the last meeting because we did not have anything of that nature for 1973. Has this been tabled in any form by the Minister of Transport in the House of Commons?

Mr. MacMillan: No, it has not, senator.

Senator Benidickson: Last year he tabled a statement with a proviso that, as auditors had not been appointed in accordance with certain statutes, it was limited in that way.

Mr. MacMillan: And this one would have to be so regarded.

Senator Benidickson: Yes, quite.

Mr. MacMillan: It is audited, but it is not certified—put it that way.

The Deputy Chairman: Honourable senators, we have no other copies of this document which Mr. MacMillan has given us, but it will appear in today's proceedings.

Senator Benidickson: This did appear in the press, did it not? At least, a summary of it did since this committee met last week.

Mr. MacMillan: No, this statement is confined to Canadian National Transportation, Limited.

The Deputy Chairman: I believe what was tabled, Senator Benidickson, was the consolidated balance sheet of Canadian National Railways as at December 31, 1973, and the Air Canada 1973 financial statement. Those, I understand, were tabled in the other place last week.

Senator Benidickson: Oh, that is what I was referring to.

Senator Smith: Mr. Chairman, if the document which is being tabled now is not extensive, perhaps photocopies could be made for all of us.

Senator Langlois: At least enough to go around.

The Deputy Chairman: Yes, I will have that done.

Do you need a copy in order to ask your questions, Senator Riley?

Senator Riley: No, I can pursue this line of questioning without the financial statement, Mr. Chairman.

I think I asked last week about the operating policy of CNTL and how it is tied in with the Canadian National Express division of Canadian National Railways. As I understand it, Canadian National Express operates Canadian National Transportation, Limited, at least in some parts of the country. The sales end of it is Canadian National Express. The billing—waybills or probills—is all under Canadian National Express. Canadian National Express employees operate Canadian National Transportation Limited, and this particular company is operated at cost, I understand, and bills Canadian National Railways at the end of each year. Is this so?

Mr. MacMillan: Perhaps if I were to explain the policy, the answers to your questions would emerge.

Senator Riley: Very well.

Mr. MacMillan: Several years ago—and I am sorry I cannot put a date on it, but I do not suppose it really matters—we recognized that there had to be a change in rural railway service. You will recall that originally we had running on almost every piece of rail track in this country, as the Canadian Pacific, some form of passenger train, then mixed trains and then way-freights and these other means of moving both people and goods. Less than carload movements were broken into express traffic and LCL traffic, and we carried the express traffic in an express car on a passenger train and the LCL traffic was sometimes carried in half that car and sometimes it was carried in an open car on the wayfreight.

As time went on this service became inadequate and we decided at that time that it was best done by putting it on the highway.

There immediately arose a jurisdictional problem as to whether or not these highway vehicles ought to operate on

the highways in the name of the railway *per se*, the parent company, or in another name which rendered them automatically subject to provincial jurisdiction.

The vehicle chosen was Canadian National Transportation Limited, which is a federal incorporation by Letters Patent that had been brought into being many years before and was lying dormant. So we activated that company and used it as the vehicle to make applications to the provincial highway traffic control boards, because I decided then that we were not going to provoke a constitutional harangue and that we would attorn automatically and fully to provincial authority on the highway. This we did, and we applied to the various boards from coast to coast for such highway rights as were required to operate these vehicles.

In some cases there were enough operations to justify the establishment of separate crews to man those trucks, crews who were employed directly by CNTL. In others there were not. Also we had on our roll then, and we still have, a number of Express employees working under seniority agreements which gave them the right to man certain of these vehicles. So what has been done in some instances, and the Maritimes is a good example, is that CNTL bought the trucks and made the application for authority to operate them, and the service provided fundamentally in these vehicles is express traffic. It is traffic which years ago would have been moved by rail, but it is now moved by highway. They are very largely point-to-point movements, and the relationship between the railway operating arm and the express department, in so far as determining the amount of money which is to be paid for the operation, is on an arm's length basis. If the CNTL is prepared to do it for a figure that is equal to what express can obtain in bids from other operators, then CNTL will get the business.

In the actual accounting, as you say, the waybills and the probills are CN Express documents, because it is CN Express traffic. The drivers are CN Express in the Maritimes, for convenience, and the wages paid to them are charged back to CNTL, and the Express department pays CNTL for each movement between these various points.

That is the relationship which governs the vast majority of the volume of the movements.

Since I saw your *Proceedings* and identified your interest in this subject, I asked what common carrier volume there was involved in it, and I was told that, expressed in dollars, perhaps about 1 per cent of the gross earnings of the CNTL in the Maritimes would be in respect of common carrier movements. These are basically truckloads, as I understand it, and they are moved by CNTL with their own waybills and their own probills, and pursuant to public tariffs issued in respect of them.

Does that answer your question, sir?

Senator Riley: Mr. Chairman, I would like to ask a supplementary question. When you say, Mr. MacMillan, that the CNTL is operating, does it have its own sales force, or does it rely on the sales force of Canadian National Express? Does CNTL seek business by itself?

Mr. MacMillan: Not basically, not extensively; otherwise the volume would be more than the one per cent.

Senator Riley: Right.

Mr. MacMillan: It is possible that they have a few salesmen, but I would not think there would be many, if there were any. There are some officers in the Atlantic provinces who are joint officers. They have an official position in the Express department, and at the same time an official position in CNTL.

Senator Riley: I understand that in the Maritime CNTL operates, or has as a subsidiary, Eastern Transport. Does Eastern Transport operate under CN Express?

Mr. MacMillan: No, not at all. CNTL is the parent company, its headquarters are in Toronto, and it operates all of what we call the separately operated truck companies. Eastern is managed from Truro, and the reporting relationship is to the general manager of CNTL, who is based in Toronto.

Senator Riley: Then you mentioned earlier that it was set up in order to provide some of this non-urban point-to-point in rural areas where there had been abandonment of rail lines.

Mr. MacMillan: That was the original concept.

Senator Riley: And it has grown from that, I take it.

Mr. MacMillan: Yes, it has.

Senator Riley: You have truckload shipments, say between Saint John and Halifax. You advertise that as a night rider operation. That would be mostly truckload lots emanating from points in New Brunswick, say the main points of Saint John and Moncton, and then going right on to Halifax, without any intermediate drops or pick-ups?

Mr. MacMillan: That is right, sir. I would expect that is what it is.

Senator Riley: So, actually, what CN Express is doing is competing with the other licensed common carriers and using as a device CNTL. And then, if I recall the answers I got, CNTL, at the end of the year, bills Canadian National Railways through the Express company for its operating costs only, and I suppose there is provision for depreciation of its equipment; but on examining the balance sheet, as I recall, I wondered, if this were so, why does CNTL have considerable assets apart from their rolling stock?

Mr. MacMillan: Well, I think the statement that you say you were given, that they bill only for operating costs, is erroneous, because I know . . .

Senator Riley: That is what I want to know.

Mr. W. R. Corner, Vice-President, Accounting, Canadian National Railways: I wonder if I could clarify the position relative to that. When CNTL carries express parcels for CN, CN has made out all the waybills for the individual express parcels. They are loaded in the trucks, and they are carried away by CNTL. There is a bill of lading prepared between CNTL and CN, and also that consolidated truck load moves on a CNTL waybill.

Reference was made earlier to the fact that in New Brunswick and Prince Edward Island there is this common carrier status for CNTL. There is a very modest share of business that comes from that source, the one per cent that Mr. MacMillan mentioned; but if we are soliciting traffic as a common carrier in those two provinces under the name of CNTL, we would have to use a CNTL waybill.

Senator Riley: Well, to get back to the assets of CNTL, apart from the rolling stock, do they have investments in

other areas besides Eastern? Do they have investments in other companies, transportation companies?

Mr. Corner: Yes. This balance sheet, senator, that you have before you—or it might be in the process of being reproduced—is the balance sheet of the CNTL holding company, and what we have there, on the assets side, is our investment in the separately operated trucking companies. You know, what we invest at the beginning plus certain advances to date, and also we have the investment in the vehicles that constitute CNTL. There are very few assets other than the motor vehicles, the trailers, the tractors, and that type of thing.

Senator Riley: That is the tractors and the trailers of CNTL?

Mr. Corner: CNTL.

Senator Riley: Plus the investment in these other companies.

Mr. Corner: In the separately operated trucking companies, yes.

Senator Riley: And this makes up for all the assets on the balance sheet?

Mr. Corner: It does, yes.

Mr. MacMillan: There are no fixed assets of CNTL shown at all in the balance sheet. I would be surprised if it had any. The assets which we have been discussing are equipment. The separately operated trucking companies such as Eastern, do have fixed assets, which are standing on their own balance sheets, which are consolidated in this one.

Senator Riley: They are consolidated in the CNTL balance sheet?

Mr. MacMillan: Yes. And when you get it back you will notice there is one item reading, "Investment in subsidiary companies." Those are the separately operated trucking companies. The only one left in the east, I think, is Eastern.

Senator Riley: CNTL, as I understand it, is not licensed in the province of Quebec.

Mr. MacMillan: No.

Senator Riley: Is it licnesed in the province of Newfoundland?

Mr. MacMillan: I do not think so.

Senator Riley: Is it licensed in any province beyond Quebec?

Mr. MacMillan: CNTL?

Senator Riley: Yes, as a common carrier. Is it licensed as a common carrier under provincial jurisdiction in any provinces west of Quebec?

Mr. MacMillan: I am not trying to evade your question, senator, but I do not think it is, and the reason I say that is because, in Ontario, for example, we have a number of separately operated trucking companies serving a very good segment of the province operating completely independently, the same way as Eastern operates in New Brunswick. We do have a unique situation in greater Toronto, in that our great bulk terminal is north of the municipal boundary of Toronto. It is what was called Concord, and we have a highway haul there of perhaps 20 miles to get into the heart of the city of Toronto, and so we had to go to the provincial government for, really, bridge rights on that highway, to get into the distribution. Then, out of this terminal, we had to peddle directly to break bulk points in western Ontario—Brantford, Guelph and places like that. So the situation here is somewhat different.

In Manitoba we have some CNTL operations—or we did have, where they were in direct substitution for rail service. There was one up between the lakes, and so it goes on. But in no instance that I know of does CNTL, as such, have any fixed capital assets, but they do have investments in equipment to perform these chores. However, they are, in turn, on a contractual basis with the parent company and, as I said a while ago, I have known of instances in which CNTL has bid for the movement of traffic by highway but has bid higher than an independent, and the independent has been given the business.

Another feature you were interested in at the last meeting was the question of subsidy, and I can assure you that CNTL has not received any subsidy at all.

Senator Riley: Under the Atlantic Region Freight Assistance Act.

Mr. MacMillan: No.

Senator Riley: Has CNTL made any application for such subsidies, or endeavoured to obtain them?

Mr. MacMillan: To my knowledge, the Railways do not get any subsidies on Express. I know we did not for many, many years. Of course, on the rail we get express subsidies.

Senator Riley: I understand that, but, as far as I know, there is no provision in the Atlantic Region Freight Assistance Act which precludes CNTL from applying for this subsidy.

Mr. MacMillan: We have never got it. I know that, because I asked about it.

Senator Riley: If I may repeat here, CNTL, I take it, has no investments in any other company than highway transportation companies which, I presume, are all devoted to the movement of CN express shipments.

Mr. MacMillan: I am not sure.

Senator Riley: I guess Eastern is in direct competition with other carriers?

Mr. McMillan: Oh, yes, Eastern lives in its own competitive environment.

Senator Langlois: In this statement I see under the heading of "other income" income from separately operated trucking companies. Would Mr. MacMillan tell us more about these separately operated trucking companies, what they are and how they operate?

Mr. MacMillan: The first one, starting in the east, is Eastern Transport, about which I have been speaking to Senator Riley. Let me explain, first of all, what we mean by "separately operated trucking companies". These are companies which in every instance existed in other ownership originally and which we acquired through the years

and which had at that time provincial franchises to carry on a pre-determined type of highway business. In some instances they were general franchises and could engage in any type of trucking business, while in other instances the franchises were limited. I can think offhand of one that was a bulk contractor—that is, he carried bulk cement and things of that nature. That was the limit on their licence. They were scattered from coast to coast. We have preserved their operations in their original names. In some instances we have put two or three companies together under one of the original names, and that is the situation with Eastern.

At one time we owned another company which had a little empire based on Sydney, and it was called the Sydney Transfer and Storage, or something like that, and it was merged into Eastern and became part of Eastern as we now know it.

These companies have their own management. They are all truckers; that is their way of life. They operate in the competitive environment which exists in that community. They have no direct connection with the railways in the locality. The railway officers have no supervision over them whatever.

Moving then to the west, we have none of these companies in Quebec but we have a number of them—four or five—in Ontario, and then we have some more in Manitoba, Saskatchewan, Alberta and British Columbia. So the separately operated trucking companies embrace perhaps a dozen across the country, and they provide the capability for interconnecting in some instances, and in some instances the original charter had interprovincial rights. Thus we can carry on the highway business except through the province of Quebec, where we have no separately operated trucking company.

Senator Langlois: Is there any reason for this?

Mr. MacMillan: Yes. The provincial government, through its Highway Traffic Control Board, has never been in favour of granting either of the railways intra-provincial rights. Canadian Pacific have limited rights while we have extremely limited rights. We can move into Montreal from Ontario on interprovincial licences, but that is the extent of it.

Senator Cameron: Dealing further with that point, what percentage of the trucking in the Prairie provinces would be operated by CNR? For example, who owns Allied Van Lines?

Mr. MacMillan: We don't.

Senator Cameron: I thought you did.

Mr. MacMillan: No.

Senator Cameron: Well then, what is the percentage?

Mr. MacMillan: It would be very small. It would be very difficult for me to guess; nevertheless I would guess about 5 per cent. I could be out a bit on that, but not very much.

Senator Flynn: Mr. MacMillan, coming to your comment on the deficit of $21 million for 1973, you said that if it had not been for the strike the result would possibly have been instead a surplus of about $10 million. Apparently, there was a loss of $60 million in operating revenues. I was wondering about this. Was this a complete loss, or was the company able to recover part of it during 1974?

Mr. MacMillan: No. Let me say, as a preamble to answering your question, that during the strike there had been a great accumulation of traffic, consisting of traffic flowing out of manufacturing plants, mines and other operations where they put the goods on the ground to wait for us. That traffic, insofar as it remained on the ground, was not lost to us but helped to create the problems of volume which were so severe for so many months afterwards. On the other hand there were cases where traffic moved by alternative modes during this period, shipping patterns were varied; also cases where no shipments were made at all, and sales were lost. We estimate that the permanent loss of CN rail traffic so caused was of the order of $60 million. That is subject to all the vagaries of estimating. We may be out a bit, but we think that is approximately what it was.

On the expense side, our gross expenses did decline appreciably during the strike period, because the people who were on strike were not being paid and in other instances there were others who were displaced because there was no work, but that was not very extensive, because, as you recall, we went through a lengthy period of rotating strikes when, for example, we were working today and then struck at 8 o'clock tomorrow morning. In many such instances we did not know about the strike and the employees would appear for the morning shift. What do you do with them then? You cannot turn them away, because in that case they get five hours as a minimum call in any event. So we had a wage bill which was intermittent, broken, fragmented, but nevertheless it cost us, we think, a considerable amount for unproductive expense during that strike period. The net result was the loss of about $60 million in revenue—decreased expense of about $30 million giving a net loss of about $30 million.

Senator Flynn: How is the increase in wages from arbitration reflected in those figures?

Mr. MacMillan: Well, of course, we had to pick up the retroactivity of the original wage settlement by Parliament, and then we had to put into the 1973 accounts the retroactivity which flowed from the arbitration.

At one point in time I knew this all to a decimal point, because I spent many nights trying to play with these figures. I have lost them momentarily. Those are all in the 1973 accounts. If you wish, they could be said to have put us into the red. I prefer it the other way, because I think it is more realistic to say that it was the traffic loss and the unproductive wages during the strike which brought it about. But one could rationalize it equally well on the basis that we could have survived a traffic loss if we had not had to pay such substantial wages, and particularly the retroactivity which flowed from the final arbitration, which I think cost us $23 million.

Mr. Corner: It was $21.6 million on January 16, as a total.

Mr. MacMillan: If we had not had to pay that, we would break even.

Senator Flynn: You mentioned that in 1974, if things go well, you expect a surplus.

Mr. MacMillan: We would hope for a surplus.

Senator Flynn: This increase in wages, is it compensated for to some extent by grants from the government?

Mr. MacMillan: No.

Senator Flynn: Or the increase in the freight rates?

Mr. MacMillan: No. The increase in wages which we encounter in 1974 at this point in time will not be compensated for by the government. As you know, the fact is that the groups of rates which we normally increase on a horizontal basis are frozen. I would anticipate that the government will come to our aid in respect of those; but the order of magnitude will not be as great as the ongoing additional wage costs.

At the same time, we are continuing to experience an increase in the volume of our business and, of course, every year we try to build into the methods of operation productivity increases. We think we can get three or four per cent on an annual basis flowing from productivity and putting it all together and bearing in mind the reservation I expressed a moment ago about receiving assistance in lieu of the freight rate increases, we think we have a fighting chance of getting it back into the black in 1974.

Senator Langlois: In answer to Senator Flynn's question, you referred to this traffic you have lost through changes in the modes of transportation. Did I understand you to say that you do not expect ever to get this traffic back?

Mr. MacMillan: No, no; I think the bulk of it we have back again.

Senator Langlois: You have it back now?

Mr. MacMillan: What I meant was that if we had traffic from, say, a plant manufacturing automobiles, the automobiles which were manufactured during the initial period of the strike, which could not be carried by rail, were driven away. The manufacturers took them on the highway in carry-alls and by individuals. Those automobiles are gone and we will never get them back. But, by virtue of the rail shutdown the automobile plants had to shut down also. So, when they came back to work the flow was picked up again. The extent to which we moved by rail pre-strike, we moved the same after the strike; but the traffic that had to be moved during the strike period and was moved is gone to us. Hopefully, we shall not have lost the continuing flow of that kind of traffic for the future, although we might in a couple of instances, but it would be very small.

Senator McElman: Mr. MacMillan, when you reach a collective bargaining agreement for the CN operations, the wage structure is identical across the country, is that correct?

Mr. MacMillan: That is correct, national agreements.

Senator McElman: For all employees?

Mr. MacMillan: Everyone in that category in the agreement, that is right.

Senator McElman: Presumably, you have separate collective agreements with your employees, for CN Hotels, CN Express—

Mr. McMillan: Yes.

Senator McElman: —and subsidiary companies. Does the same thing apply there?

Mr. MacMillan: I hesitate because, by and large, that is true, but in some instances there may be an agreement which covers a category of employees who would show up in two different functions. I do not think so, but that is conceivable. Basically, the agreements are related to the particular labour organization, on the one hand, and the consolidated work force, on the other.

Senator McElman: Let us take the CN Express. You have a collective agreement for your employees there. Are the wages for your truck drivers in the CN Express the same in Moncton, New Brunswick, and Toronto as they are in Hamilton and in Winnipeg?

Mr. MacMillan: They are, with one exception—I think it is the city of Vancouver, where we are living in a very expensive labour area. I rather think that the delivery men in Vancouver are paid a slight differential over the agreement rate. It is a premium, an additive on top of the national rate.

Senator McElman: Then in all the collective agreements of your principal company and subsidiaries you do not accept a differential; it is the same all across the country?

Mr. MacMillan: Well, yes. I really do not know what you imply by we "do not accept". I should tell you that the labour organizations for a very long time have been adamant that rates must be on a national basis. If they were prepared to deal with a given category and prescribe local rates, we could live with that. But the insistence upon national rates flows from organized labour.

Senator Forsey: It is the result of a long struggle.

Mr. MacMillan: Indeed, it is.

Senator Grosart: Mr. Chairman, may I, through you, say to Mr. MacMillan that some of us here had hoped that one of the last of his many great achievements might have been to rationalize the manner of presentation of these "annual" bills of capital expenditures and guarantees.

I presume that in a week from now, if I understood him correctly, Mr. MacMillan is retiring. Then he might come back and we might ask him waht the CN system has done to try to improve this situation—or she might be brave enough to answer that question now!

Mr. MacMillan: I do not know how I can answer that question specifically, but I can say to you, as I said a while ago, that the system has worked reasonably well. Some gentlemen in this room are familiar with it.

That was during the period when the annual budget was dealt with in the very early part of the year, and the legislation was formulated and introduced shortly afterwards. Until three or four years ago, and it may be a wee bit longer, the appearance of the Canadian National and Air Canada before the parliamentary committee was related to their annual reports, and we spent days and days talking about the contents of the reports prior to the introduction of the Financing and Guarantee Act. The annual report provided a breadth of inquiry that embraced everything one could anticipate being dealt with in that act. We tried at that time to have the reports considered by the parliamentary committees prior to the Easter recess; it was all buttoned up.

Then, when the F. and G. Act was introduced in subsequent weeks it normally received prompt attention in Parliament, and the cycle was completed.

The concept of the act is all right because it deals with the current year and into the first six-month period of the next ensuing year. As long as we are talking about 1974 in 1974, and the future involved with the first half of 1975, it

is in phase and there are not any problems. But it is because the legislation has not had an easy passage through the House in recent years that the whole thing has fallen out of phase.

This legislation, for example, you recall is dealing with the calendar year 1973 with the first half of 1974, and it is a year out of date. At this point in time it should be talking about 1974 and the first half of 1975.

Senator Grosart: It has two months to run; that is all.

Mr. MacMillan: Yes, that is correct, but if it had been in its proper sequence and proper phasing it would have had 14 months to run, because we would then be dealing with events up to July 1, 1975.

Running alongside of it is the fact that our annual report, by statute, must be signed by the auditors, and the only way in which the auditors for this company can be appointed is by Parliament. At one point in time we had a separate bill, a short bill which dealt with auditors and auditors alone, but then years ago, just in aid of reducing the work before Parliament it was consolidated as a section into this statute. But we immediately get into "the chicken or the egg" conundrum, because it has not been possible to file a proper annual report certified by the auditors until the Financing and Guarantee Act has been enacted to appoint such auditors, and, as a consequence, the annual report has not been used as the basis for the appearance of the two companies before the parliamentary committee for a couple of years. We have been appearing pursuant to other legislation.

Now, so far as the railway is concerned, this bill in the first couple of clauses—and I am not going to refer to it because I do not want to put it on a technical basis—denotes authority for the making of capital expenditures which were made well over a year ago; that legislation in my opinion, is not even required because the Canadian National Railways Act, upon the approval of the capital budget by Order in Council, empowers the directors of the company to make capital expenditures. So that part of the statute is not necessary for the railway at all.

It also provides elaborate financing opportunities, which again are traditional; they have been there for 30 years in one form or another, basically in this form, but the method of financing Canadian National by virtue of the pressure on interest rates has radically changed in recent years. In the first place, insofar as capital debt is concerned, we have borrowed no money from anybody on bonds for close to 15 years. In fact, we have paid back $100 million against the bonded indebtedness of Canadian National. With respect to new equipment that we are buying, we have the authority by an Order in Council, and have been so doing, to use equipment financing, because the interest rates on these are radically more attractive than on bonded debt.

Senator Benidickson: That could otherwise be called a leasing of equipment arrangement.

Mr. MacMillan: Yes, that is correct; and these are very favourable. Periodically the rates have been extraordinarily low. As a consequence, we have not used borrowing authority contained in the statute, I think, for a bare minimum of ten years.

Senator Grosart: That is public financing?

Mr. MacMillan: Yes, we have not done any at all.

Senator Benidickson: When you say you have not done any borrowing in that period of 15 years, you have nonetheless, because of a statute of a little more than 20 years' duration, been able to get from the government a purchase of your preferred shares which so far have not paid interest?

Mr. MacMillan: That is correct, yes.

Senator Benidickson: Later I might ask as to what those have been over the years.

Senator Grosart: Mr. MacMillan, given these circumstances—whether we wish to call them legislative or political does not matter—do you believe there can be improvement in the presentation of this kind of bill so that what we are faced with now can be avoided in the future? Do you think there is a way out?

Mr. MacMillan: Yes, I think there can be. I do not know whether I would ask you to date that as of today or a week from today! I am quite sure there can be.

Senator Grosart: Three years ago, the last time we were discussing the predecessor of this bill, we were told that an effort was being made to rationalize this situation. Is that a continuing effort? Is there a dialogue going on between the System and the government?

Mr. MacMillan: I would say, yes. I have not participated in the detailed dialogue myself, but the government, particularly the Department of Finance, has had a very considerable interest in improving this technique, and I am certain they continue to have.

Senator Grosart: Would you care to suggest what kind of improvements might be made?

Mr. MacMillan: I think one of them is that the authority for certain of the functions provided for in this legislation should be on a continuing basis. That is one thing. For example, in the definitive statute governing the affairs of the Canadian National Railway Company there is power to borrow money. The only difference between that power and the power included in this legislation is that the borrowing power in the legislation contemplates, in the proper instances, the addition of a government guarantee. And I do not see why that cannot be on a permanent basis, because the facts are that the people of Canada own this company. Normally, in a company one deals with its shareholders by calling them into an annual meeting, and so on, but the statute in our case provides that expressions of opinion by the shareholders of Canadian National shall be granted by Order in Council. So we come right back to the Governor in Council in respect of many things, and I would like an opportunity at some point in time to try to convince parliamentary committees that they should put it into the definitive act that we can borrow money with the consent of the Governor in Council.

Senator Grosart: Would your suggestion then be that there would be an act? Although, apparently there is an act already.

Mr. MacMillan: Well, you would have to amend the Canadian National Railways Act to do that, if that were regarded upon examination as the proper vehicle.

Senator Grosart: So there would be permanent authorization to the System—I will call it the System—to incur capital expenditures.

Mr. MacMillan: I do not think we need it. That could provoke a legal discussion, and I do have a legal degree in my background, but it is 25 years since I have seen it or done anything about it. But I still do not think there is any legal requirement for Canadian National to obtain further authority to make its capital expenditures, provided the capital budget has been approved by the Governor in Council pursuant to the CNR Act.

Senator Grosart: Without any further Order in Council authorizing it?

Mr. MacMillan: Yes, once they issue the Order in Council approving the budget, I think that empowers the directors of the company to spend the money.

Senator Grosart: Then what authorizations, either guaranteed authorizations or otherwise, would be required on the permanent basis you suggest?

Mr. MacMillan: Only a very small amendment to the act, and that could be to the effect that in the financing of approved capital expenditures the company could borrow money from the government or from the public, and, in the latter eventuality, that the bonds could carry a Government of Canada guarantee. This would go a very long way towards satisfying the essential continuing requirements of this legislation.

Senator Grosart: Would you see this government guarantee as permanently embedded in the legislation?

Mr. MacMillan: Surely. I would put it right in, because it can only be invoked with the consent and, really, at the initiative of the Governor in Council.

Senator Grosart: Where, then, would parliamentary control of the expenditures lie? In other words, if you had an enabling act, which is what it would be, subject to implementation by Order in Council, at what stage would you have an opportunity for parliamentary control, other than, of course, the reference of the annual report?

Mr. MacMillan: Well, I was really considering your question, and particularly the word "control." I would have to think about that, from that point of view. I do not know at this moment, but I was going to suggest to you that there would be ample opportunity for inquiry into all of these matters through the vehicle of the annual study of the annual report, which I find highly desirable. It gives an opportunity for people to find out what has gone on and what is likely to go on, and I think that in the broad gauge it is beneficial. Now, that is not necessarily of the same significance as "control". I do not know where you get "control" but I am not at all sure—and I say this with a smile on my face, because the record does not show smiles—that there is control in the vehicle of the Financing and Guarantee Act, in any event.

Senator Langlois: Mr. Chairman, on this very subject I would like to put a question to our Law Clerk, through you. Could not this control, referred to by Senator Grosart, be provided by an item in the supplementary or main estimates on loans and advances?

Mr. E. Russel Hopkins, Law Clerk and Parliamentary Counsel: Well, I think so. As a matter of pure law, yes.

Senator Benidickson: Well, yes, but the Finance Committee of the Senate has been protesting for some years that there are too many briefly stated phrases in the estimates, which are legislative, which perhaps can be overlooked, and which are inadequately examined and debated by a committee either in the other place or in the Senate. Senator Grosart and myself, perhaps, have been in the forefront relating to complaints of that type concerning what is always called "the equivalent of legislation."

Senator Langlois: You are referring to $1 items.

Senator Benidickson: No, no. Well, yes; in a way it could be a $1 item. They go through under the pretence that the item is nominal, and is only $1, but the language is so permissive and so wide that it has tremendous implications; whereas when we are presented with individual bills outlining the methods under which certain officials would carry out their duties, and certain things would be done, we react differently in our examination of them.

Senator Grosart: I do not want to get into a discussion of this kind, but let me say that when I used the word "control" I was speaking only of the obligation of Parliament in respect to the expenditure of public funds. I am aware that perhaps the purpose of setting up proprietary corporations under the Financial Administration Act is to give them a degree of independence in operating control. I am only speaking of the monetary control, which surely is a responsibility that Parliament must take. It must take the responsibility for the expenditure of its funds, even if they are in the form of loans, and this is what we are talking about here.

In this kind of improvement, or rationalization, Mr. MacMillan, would you see some degree of consolidation of some of the acts which govern your activities—such as the CNR Capital Revision Act, the CNR Act, the CNR Refunding Act, and so on—into a single statute?

Mr. MacMillan: Yes, I would. Just on, really, a philosophical base, my acquaintance with the history of this is that statutes of this kind have to be studied and consolidated periodically, and it is a long time since there has been a consolidation of the legislation affecting this company. We have, historically, consolidated it two or three times, and maybe it is down to the point where it should be done again. I rather think there is merit in that. I think that there are provisions in the various statutes which must prove very difficult for someone not familiar with them. In many instances they would not even know of the existence of these other statutes, because the provisions show up and we operate, in part, under one act, and, in part, under another, and through the whole gamut of six or seven different statutes. Sometimes, on their face the provisions appear to be contradictory. They are not so, really, but the background knowledge is essential. I think consolidation of all our statutes is something that should be done in the near future.

Senator Grosart: A final question, Mr. Chairman.

The fact that you have been able to get along for two years without the predecessors of these bills, since 1970, 1971, raises the suspicion that we do not need the bill at all.

Mr. MacMillan: No, no. I thought I was quite frank about that. I thought I left you with the impression that insofar as the railway was concerned many of the provisions of the statute are not necessary for us, and the reason is that we, as a matter of fact, can explain that we have not borrowed any money—any new money—from the Crown for a very long period of time, and we live entirely, for our operating expenses, on our operating income plus our deficit. Now, the deficit is approved by appropriation in

Parliament, and so that looks after that phase of our business. Our capital expenditures are defrayed very largely by our self-provoked depreciation, and by an item called "salvage", which in fact is salvage, and amortization of debt, which provokes some millions on top of that, and then the sale of the preferred stock, the proceeds of which must be expended on capital account.

In the last two years we have not been able to sell this preference stock and, as a consequence, that money which we normally would receive from government has not been forthcoming; and, in the first instance, what we did was to live on our working capital. Then, as it became exhausted, we had to borrow from the chartered banks; and so it goes on.

If we had machinery whereby this preference stock was put on a permanent or a semi-permanent basis, which it was for ten years, and was not dependent upon the annual re-enactment of that section in the act, then we could get along, in these circumstances, quite well.

Senator Grosart: With 4 per cent money.

Mr. MacMillan: No. It is free money; that is what it amounts to. It carries a 4 per cent dividend rate if earned, and again that is all spelled out in the—

Senator Grosart: It is still 4 per cent money. I have got some of that out myself, in one or two instances.

Could I then ask you what was the necessity of using the refunding act? And how would that operate? Was this not one of the ways you got funds for two years?

Mr. MacMillan: Well, yes and no. It works this way. We have in our capital debt a large amount of money in the form of outstanding bonds which are shown in the annual report in one of the back pages. These mature at certain predetermined dates in the future. As these dates of maturity are reached, the particular issue has had to be refunded in some form. Many, many years ago we refunded that debt by the issue of new securities, but eight or nine years ago the Department of Finance, the Bank of Canada and the railway decided that rather than having us go into the market with refunding issues, it was better for global government financing that it should all be done by other means. The reason for that was that our securities carry a government guarantee, and we occupy that part of the market which is also occupied by the government. Therefore, we could upset the market at any given point in time, or affect it in some way or other. So it was decided that as the bonds matured they would be picked up and be refunded under the refunding acts.

There has been in existence from the very beginning—for about 50 years—a refunding act in one form or another which has provided the Governor in Council with the authority to redeem bonds outstanding by the Canadian National, and earlier by our predecessor companies, and permitted these to be dealt with on a current basis. When I say that if we had not had it it would not have had any real effect on us, that is correct, provided the government could have found a means for doing it without this legislation.

As far as the railway was concerned, we could have refunded the debt without the authority to do so. But the refunding acts have stood off by themselves; and, again, through the last 50 years periodically it has been necessary either to increase the global amount to be dealt with under a specific piece of legislation or to have enacted a refunding act. These have placed a ceiling on it, and they are confined to refunding maturing securities. In other words, it does not increase the debt, but it changes it.

Senator Grosart: Mr. Chairman, I am not a member of this committee, and I cannot make a motion, but I would like to suggest for the consideration of the chairman and the steering committee that in due course they might seek the co-operation of Mr. MacMillan in coming up with a rationalization along the lines he suggested, which the committee could discuss with him. I say that because I can think of no greater contribution that this committee could make in this context than to come up with an answer for the government with, perhaps, some steam behind it, to insist that we do not continue in this situation where we are three years away from the point and where the Minister of Transport said he would not take responsibility for the act because it was *ex post facto* and it was, to use his own words, "a mess". I think this committee could make a tremendous contribution by talking with Mr. MacMillan, when he is free, and coming up with something which can be presented to the government as a recommendation of this committee and of the Senate.

The Deputy Chairman: Can you suggest something we could put in our report?

Senator Grosart: Well, I am not a member of the committee.

The Deputy Chairman: I do not know exactly what procedure we could adopt in the circumstances. I think it is a good suggestion.

Senator Langlois: When we get to the reporting stage we could probably refer to this.

Senator Graham: Mr. Chairman, I apologize to my colleagues and to yourself, but I am about to ask a question which has been asked on many other occasions. In view of the fact that I am a junior member of this committee, I do not think it is inappropriate to ask it at this time, in view of the fact that Mr. MacMillan will be retiring in one week. I understand that Air Canada is a subsidiary of CN. Is that correct?

Mr. MacMillan: That is correct—by stock ownership.

Senator Graham: Apart from the obvious advantages by virtue of the fact that they are both involved in transportation, do you see any advantages to continuing that kind of ownership?

Mr. MacMillan: Yes, I do. I think that the two together are stronger than they would be separately.

Senator Graham: Do you see any significance in the fact you are now to have two successors?

Mr. MacMillan: Yes, I do.

Senator Graham: As I understand it, sir, you were chairman, president and chief executive officer.

Mr. MacMillan: Yes, I was the whole shebang, as we say in the vernacular.

Senator Graham: And now as your successors you have a chairman, and a president who is also chief executive officer?

Mr. MacMillan: Yes.

Senator Graham: Two or three years ago the same kind of change was made in Air Canada. Previously they had had a president, chairman and chief executive officer and now they have a chairman who is chief executive officer, and a president as well. Do you see any significance in this?

Mr. MacMillan: I think I should state here that in connection with Canadian National I am very happy that the government accepted my recommendation, which was to divide these two jobs. I recommended that primarily because the character of the functions to be discharged at the very pinnacle has changed somewhat in the last five or six years. The job, in the hands of one person, has become, in my opinion, too intensive to be properly discharged. This comes about because of a great variety of circumstances. For example, we have had much more intensive periods of labour negotiations. These used to occupy a relatively short period of time. My opinion is that that has changed on a permanent basis. I am not blaming anyone. I am simply stating the fact that the consumption of time required to bring about a successful labour contract is vastly greater than it used to be.

Also there are so many other areas where we have activity which we did not have until quite recently. For example, there is the very intensive activity from coast to coast on a provincial basis appertaining to the railways. They are not the most popular corporations in Canada at the moment, and this adds very greatly to the burden of the chief executive officer.

I could mention many other things, such as parliamentary committees. It used to be that we had one parliamentary committee a year which lasted for about a week, and now parliamentary committees, particularly in the House of Commons, arise quite regularly. In the month of December I think I was on call before the House of Commons for about three weeks, and maybe longer, and during that period of time, of course, my constructive time, if I may put it that way, was very much reduced. By that I mean the time that I could spend on immediate railway problems. So my suggestion was that we should divide the functions, and I think it was an intelligent thing to do.

Senator Graham: One final question. As a matter of principle and practice, do you anticipate, Mr. MacMillan, that CN is going to expand its role in the hotel business in Canada?

Mr. MacMillan: Well, this, as you know, has in some instances been controversial. It is most interesting for me to know that there are some representatives of the public who are very strongly in favour of our expanding in the hotel business; and, likewise, there are many who are very much opposed to our doing so. I do not know how much greater the expansion will be, but if we have the opportunity—or if the company, and I have to remember that I shall not be there in the future—thereby has an opportunity to make a contribution to the welfare of the community, the building of the hotel may be the proper thing to do. We have had many instances of that in the past. I do not think the door should be shut on us at all.

Senator Benidickson: Mr. Chairman, perhaps there is no one here who is more desirous of endorsing your remarks, both complimenting Mr. MacMillan on his services as the chief executive officer of one of our major industries, if not the major industry in Canada, and extending to him best wishes for a very happy and also a very fruitful, as I know it will be, new career as a retiree from the CNR.

We are longtime friends. We went to the same law school. We exchange birthday greetings because our birthday falls on the same day. It has been most interesting, for the great number of years that I have been in this arena, to have had the experience that the president of the Canadian National Railways was from my law school, and that his counterpart in the Canadian Pacific Railway, the former president of the CPR, was from the same law school. Also their new president is from the same law school.

Mr. MacMillan and I maintained our friendship despite differences of opinion, particularly with respect to the financial structure of the CNR and its operating policies. In northwestern Ontario I think I personally represented, in pre-diesel days, more railway divisonal points than any other member of Parliament.

It is obvious, because we are so behind in our examination of the financial status of the railway, that we should not delay the passage of this bill. Our concern should be with what Senator Grosart referred to as possible improvements in existing legislation. That, in part, may be responsible for some of our parliamentary difficulties in properly inquiring into the operations of our government owned railway.

I should also be interested, before we pass the bill, in informing ourselves in a better way, if we can, on the results of the very major overhaul that took place in the capital structure of the Canadian National Railways. That, again, was something in which I participated as assistant to the Minister of Transport in 1952.

Perhaps you would put on the record—because I came to this meeting in haste and have not the documents in front of me—the name of the initial act regarding certain paper dragon debts, certain capital liabilities that had been a burden on the CNR, that in large part were for assets that were valueless, and so on. There was a major overhaul under the statute, the Capital Revision Act.

Mr. MacMillan: It was the Canadian National Railways Capital Revision Act.

Senator Benidickson: To make it simple, and I think it could be made available to the clerk after this meeting, I wonder if in addition to the appendices that I believe have been made part of our proceedings today, we could have also three sheets. One is called, "Consolidated Balance Sheet as at December 31"—1973. Another is entitled, "Consolidated Income Statement for the Year Ended December 31." The third, that is in the form of a financial tabulation, is entitled, "Source and Application of Funds for the Year Ended December 31."

I wonder if the committee would approve of having supplied to it, and appended to the *Minutes* of this meeting, comparable statements for the first full year after the coming into effect of the Capital Revision Act of 1952. That would not amount to very much printing.

The Deputy Chairman: Honourable senators, would you like to have those appear as appendices to our *Minutes of Proceedings*? Is it agreed?

Senator Langlois: Do we have this last document?

The Deputy Chairman: I do not know.

Senator Langlois: Who is going to supply it?

The Deputy Chairman: Can we get it?

Mr. MacMillan: We can provide it, but it will take us a little time.

Senator Benidickson: Our report would not be available for a week, anyway. I had this in my hand because I made reference to it at our meeting last Thursday.

In addition, Mr. MacMillan, in the three financial papers presented to us at the opening of this meeting, the first one refers to 1,235,180,591 shares of 4 per cent preferred stock of the CNR. Could you tell me now what a comparable figure for that holding by the Government of Canada was at the end of the first full operating year of the Canadian National Railways after the Capital Revision Act?

Mr. MacMillan: Yes, we can get it. As to the Capital Revision Act, there was issued a preference stock in the sum of $736,385,405. And in 1952 there was issued $18,486,-540. If we add the two together we get the figure that you are seeking.

Senator Benidickson: I would not want you to read the figures for all the ensuing years, but could you provide that as an appendix to our minutes?

Mr. MacMillan: Yes, indeed. I can give you in the appendix what was issued in each year since 1952.

Senator Benidickson: For each subsequent year?

Mr. MacMillan: Yes, indeed.

Senator Benidickson: Thank you.

Has any interest been paid in any of those years on this 4 per cent preferred stock?

Mr. MacMillan: Yes, there has.

Senator Benidickson: Could that be indicated as a plus and a minus in the overall picture?

Mr. MacMillan: I can give you the actual amount, too. Yes, in four years, 1952, 1953, 1955, 1956.

Senator Benidickson: Yes. With respect to the first of the three financial sheets presented to us this morning, there is, in addition to the reference to 4 per cent preferred stock, other items under the overall heading of "Shareholders' Equity". One is $359,963,017 of shares of no par value. Has that remained constant over this period since the enactment of the capital revision bill?

Mr. MacMillan: I am informed, senator, that there has been some variation in that figure, but for all practical purposes it has remained constant.

Senator Benidickson: Then, the third item under this heading of "Shareholders' Equity" is, "Capital investment of Government of Canada in the Canadian Government Railways, $428,396,779." Inasmuch as that is the same amount as shown for 1972, does that for all general purposes remain a fairly constant item?

Mr. MacMillan: Well, I think that does fluctuate a little. That has reference to the railways in the east, and we carry it basically to permit a corresponding item being carried in the books of Canada.

Senator Benidickson: Mr. Chairman and members of the committee, you will recall that at the last meeting on April 10 I made reference to having observed, in newspapers only, certain information concerning the operations of the Canadian Pacific Railway for the year 1973. Since that time I have received—as I think all members of Parliament will have received—a copy of the annual report of the Canadian Pacific Railway. At the top of page 19 of that report, under "Rail Revenues" they show an item for government payments in the calendar year 1973, $49,732,-000, as compared with $30,367,000 in the calendar year 1972.

The Deputy Chairman: Senator Benidickson, were those subsidies paid by the government?

Senator Benidickson: I am going to come to that, Mr. Chairman. I do not know what it means. Could Mr. MacMillan tell us what he thinks it means, and could he supply similar figures for the rail revenues of the Canadian National Railways for 1973 and 1972 which might be described as "government payments"?

Mr. MacMillan: I shall be delighted. If you will forgive me, I would not like to have to explain the CPR figures, but I can give you our corresponding figures.

Senator Benidickson: Fine. These come under legislation that is not of too long standing, under which, after application to the Canadian Transport Commission, in order to maintain certain services to the public, the Government of Canada and the taxpayers as a whole pay either railway, on the same formula, certain payments.

Mr. MacMillan: That is correct, Senator Benidickson. The global figures of revenue for Canadian National in 1972 were $1,187,730,000. The coresponding figure for 1973 was $1,325,466,000.

I was going on to give you the government payment components of that.

Senator Benidickson: Good.

Mr. MacMillan: In 1972 we received under the item "Government Payments" $40,742,000. In 1973 we received $120,-566,000. Now, one reason for the substantial increase in both instances, the Canadian Pacific's and ours, '73 over '72—and I might say I do not think we have actually got this money at this moment—is that included in both of these accounts is a sum of money which is to be paid to us by the government in lieu of freight rate increases in 1973 which were not invoked. In their case I think the appropriate figure is $13 million. In our case the appropriate figure is $27 million. So that included in the $120 million-odd is $27 million which is a special subsidy being provided because we did not increase the horizontal freight rates, and the remaining payments are those payments payable to us for the perpetuation of services and so on pursuant to the National Transportation Act. It is exactly the same principle as applied to the Canadian Pacific.

Senator Grosart: Does that include branch lines?

Mr. MacMillan: Yes, branch lines are included. Passenger losses are by far the largest component.

Senator Forsey: Mr. Chairman, just on that figure, I presume that the approximate figure of $27 million which Mr. MacMillan has referred to explains the $120 million and the $93 million that we have in this statement in front of us.

Mr. MacMillan: Yes, that would be correct.

Senator Benidickson: I would like to refer to what I call the second of the three financial documents, the interim

financial statement for 1973 presented to this committee this morning and to be made an appendix to the committee proceedings this morning, which is entitled "Consolidated Income Statement for the Year Ended December 31". There is shown at the bottom of this statement, for 1973, a deficit of $21,324,000-odd, compared with 1972, which was a deficit of $17,822,000-odd.

Could you put also append as a table to the minutes of this committee today a list of comparable deficit figures for the years subsequent to the Capital Revision Act of 1952?

Mr. MacMillan: Yes, we would be delighted to do that.

Senator Benidickson: Am I right in thinking that this is the kind of item that in discussion a few moments ago, when you were examined by Senator Grosart, was referred to as an item that does get into the estimates annually, in a special way, and is voted upon as the cost of the deficit of the Canadian National Railways?

Mr. MacMillan: That is correct.

Senator Benidickson: Mr. Chairman, that is all that I wanted from Mr. MacMillan, although, as Canadian National Railways is the only shareholder of Air Canada, I wondered what your intentions were with respect to any further inquiries concerning the operations of Air Canada, which also today, for the first time, has submitted some statements that are qualified as being without the certificate of an auditor appointed by Parliament.

The Deputy Chairman: I thought we could finish with Mr. MacMillan, if honourable senators have no more questions, and then ask Air Canada to come before us, and then we will be free to ask them questions. That was the idea I had in mind. I am in your hands. If you want to do something else, it is up to you.

Senator Benidickson: I thank Mr. MacMillan, even at the risk of being repetitious, because I can assure members of the committee that I have probably seen him in these buildings more often than anybody else. I thank him for his ever courteous and informative presentations to this parliamentary committee.

Mr. MacMillan: I wonder, Mr. Chairman, if I could be presumptuous enough to reply to the honourable senator, and to express to him my gratitude and thanks for his kindly comments, and also his kindly references to our very long friendship. Thank you.

Senator Riley: Just referring back to CNTL, Mr. Chairman, I would like to ask just one more question of Mr. MacMillan—or he may hand it to his staff. I would like to refer to the item "Retained Earnings," at the end of the balance sheet. The figure is $3,904,937.81. What is the composition of this amount, what does it represent, and why is it there? I am not an accountant. I would just like to have that clarified.

Mr. MacMillan: I will ask Mr. Corner.

Mr. Corner: That is the accumulated operating position to the end of 1973, less any charges that are properly to go against earned surplus or accumulated earnings.

Senator Riley: Thank you. Thank you, Mr. MacMillan.

Senator Langlois: At this time I suggest that Mr. MacMillan be requested to table, to be printed as an additional appendix to our minutes of today, the summary of the refunding made under the CNR Refunding Act, 1955, together with a list of the securities substituted under this act. I have this information that is provided to me by the Department of Finance. I could show it to Mr. MacMillan. I do not know if he has it with him. I suggest this should be in addition to the information sought by Senator Benidickson. We would then have all this information together, and it would be very useful to the committee.

The Deputy Chairman: Yes, it would be very useful.

Senator Benidickson: I think all of us have had the experience of being obliged to sit down, and never having the opportunity to get up again. I thought I had concluded, but as this is a less formal occasion, I would like to suggest further that it would be useful to have another tabulation in these rather comprehensive minutes of a Senate committee examining this matter. I intended to compliment the sponsors of this legislation this year—both in the House of Commons, as I have read the presentation there, and Senator Langlois, who made the presentation in the Senate—for what I thought was a somewhat altered emphasis and more comprehensible explanation of this exceedingly formidable financial bill. I refer in particular to the emphasis placed by these two sponsers upon the sum, when all is said and done, that is being asked for in the way of requested funds beyond what has been generated by depreciation and by other means within the system itself in the basic year for which the bill has been prepared. I wonder if, similarly, that capsule tabulation could be provided for the same period of years.

Mr. MacMillan: Mr. Corner tells me that it is quite possible, but it will take us a little while. We would be delighted to do it.

The Deputy Chairman: That is fine.

Senator McElman: Mr. Chairman, I would like to say to Mr. MacMillan that I come from Fredericton, which is the only provincial capital in the nation which does not have rail passenger service directly from either the CNR or the CPR. It is quite a distinction.

Senator Grosart: They come as close as they dare!

Senator McElman: I would like to draw the attention of the witness and officials of CN to this small mural over the west door, which many CN employees in the Maritimes would suggest is indicative of, or perhaps symbolic of, some of the rolling stock we still have in use in the Atlantic division. I was going to go, in some detail with him, into the failure of both railways to provide, for example, to the potato industry a proper type of rolling stock for the getting of their produce to its markets in fair condition. Perhaps I should, because of the lateness of the hour, wait for another opportunity and another forum for this. I did have one specific question that I wished to put, Mr. Chairman, but it has to do with Air Canada, so perhaps I should wait.

The Deputy Chairman: Perhaps you should wait, and if we could get through with CNR soon, then we could have Air Canada start right away. Then perhaps we could sit again this afternoon after the Senate rises, if we are not through; but we will talk about it later.

Senator Langlois: In this respect, Mr. Chairman, although I have had no opportunity of discussing it with the Leader of the Opposition, is it possible that we could arrange to

adjourn the Senate at about 3 o'clock in order to enable this committee to sit again?

The Deputy Chairman: I was going to ask you and Senator Grosart to confer with me after the meeting, and then try to find out if we could sit, let us say, at 3.30 or 4 o'clock.

Senator Langlois: Perhaps the Senate could adjourn at about 3 o'clock for that purpose.

Senator Grosart: I have no authority to speak for the Leader of the Opposition, but I will use my services as an intermediary.

The Deputy Chairman: So the three of us could get together afterwards, and Air Canada could remain with us, and we will tell them what kind of arrangements we can make for this afternoon.

Senator Molgat: Mr. Chairman and Mr. MacMillan, I regret not having been here for the earlier part of the meeting, and it may be that the question I have in mind has already been asked. I was at a meeting of the Agriculture Committee. You mentioned, Mr. MacMillan, that you realized that the railways were not always popular, and I had some inkling of that situation. However, after listening to the National Farmers Union representatives I find that the situation is really very much worse than you might imagine.

Mr. MacMillan: You were left with that impression, if you will pardon my interjection.

Senator Molgat: What concerns me is the policy of the CN regarding the provision of rolling stock for the grain trade. This morning, for example, we were told that last year there were some 25,000 cars in the grain service and that this year it is down to 22,000. There were many instances given of extremely poor service during the course of this winter and a quotation from the chairman and chief commissioner of the Canadian Wheat Board regarding the failure to deliver on time. Then, on the other hand, we see that the Canadian Government some two years ago had to purchase 2,000 hopper cars for the grain trade specifically, and again this year they have announced that they are going to purchase 4,000. What is the railway policy? Is it to get out of the provision of rolling stock and let the government handle it?

Senator Benidickson: You are including locomotives in this?

Senator Molgat: No, at the moment I am dealing strictly with hopper cars because obviously the government is not involved in locomotives. We are now committed to 6,000 hopper cars. So what is the policy of the railroad?

Mr. MacMillan: Well, obviously I can only speak on the policy so far as it concerns Canadian National. But there I can say quite categorically that any allegations made about Canadian National's sabotaging the wheat movement are totally incorrect. The facts are that we have kept in the grain trade as many cars as we normally do. We have about 12,000 cars in the business today, and have had them there. It is impossible for us to be specific on a daily basis as to how many cars there are at anyone point, but the system target has been to have 12,000 cars in the business. We had the same number during the winter of 1972-73, but the fundamental difference between what happened this last winter and the winter before—and you know this much better than I do on a personal basis—is that we have just experienced the worst winter on record, and we have many, many instances of branch lines, particularly in Saskatchewan, where throughout the whole winter season of 1972-73 we had to plow a very few hundred miles and spend a relatively small sum of money in doing so, but this year we have had to plow literally thousands of miles. There are subdivisions in Saskatchewan— unless they have cleared in the last three or four days, and I do not think they have—where the snowdrifts were 16 and 18 feet high and where cars were totally covered. We had one small train completely covered, and there was just no way we could get it out. The snow was not only heavy but it was accompanied by strong winds. As you well know, Prairie snow is very dry and when it is packed by the wind you can walk right up or even drive a bulldozer right up the drifts, and in consequence a railway plow going in has to be handled with extreme care because otherwise it will be derailed and ride right up on the snow itself; it will go right off the tracks. That is what happened. So the horror stories we hear about how the railways had, of their own volition, abandoned things are completely untrue. There were instances on the Prairies, as there still are, where we could not get in, but it was not because of managerial philosophy that these things came about. It was simply a question of contending with the weather. The Wheat Board was realistic and recognized that in some instances that was a wrongful use of our capability and they gave us orders to move grain from places where we could get at it—in other words, on the main line.

The real point I wish to emphasize is that we did not at any time sabotage the grain industry. I am from the Prairies myself, and if there is anybody in the business who can understand the impact of all this, I think I am that person. I have kept cars in the grain trade by hook or by crook.

In addition to the forces I have mentioned, there were other abnormalities which we experienced this last winter. For example, in recent years we have used covered hopper cars of our own ownership for this grain trade that in the normal semi-annual peaks are in the potash trade. But this year there was no slackening of that trade, it continued to move, so the cars were not released to us, and we could not get them into the grain trade. So we have pretty well discharged our obligation to the Wheat Board. Perhaps we were a little shy, but not to any shocking extent.

I do not know of any instance myself where any ships have been held in Vancouver waiting for loads during this winter because of any failure on our part. As a matter of fact, most of the time there has been a goodly amount of grain there, under load, in boxcars and available to be offloaded.

I can philosophize on this for a great length of time because I have thought a great deal about it. The movement of grain is a fragmented business and that is one of the reasons for the difficulty which arises initially with the farmer who sows his farm and does not know whether he is going to get a crop or not until he actually has it. Then, whether he markets it or not is a very personal choice, and the control of the Wheat Board does not come into the picture until he has marketed it.

A year ago now we had all kinds of capability to move grain; we had leased a couple of thousand boxcars in the United States and we had leased locomotives to move

them, but the segment of the Prairies that we serve had a very small amount of grain offered for sale or that needed to be moved. That is how it was, and there was no way that that could be accelerated. It just was not there. In any event, it goes into the country houses.

Then, at one end of the province there is the question of grading because the grain is damp and has to be dried and where it is mixed with cereals and grades which are not at that point in time sought after by the Wheat Board for movement. Then we get the same cycle again at the terminal elevators at the Lakehead and Vancouver, and to a lesser extent at Churchill and Prince Rupert. But we very often have cars there containing two or three million bushels of grain but they are the wrong grade and the wrong kind of cereal. I am not blaming anybody for that, but I am simply stating that it is a fragmented business and it is very difficult to put your thumb on the true explanation for the problems as they arise at any given point in time.

Mr. Hopkins: Do you have serious difficulties now with flooding?

Mr. MacMillan: Yes, we do. The main line was out for a couple of days and we have had to make use of trestles. The CPR line is out west of Moose Jaw and the branch lines are going to be difficult in some places. Anyway, the main point of what I have been saying is to stress that we did not sabotage the grain effort.

Senator Molgat: I recognize the problems that have been encountered this winter, but those on the other side of the argument will say that the roads in the west were kept open and the school buses travelled every day. Now I know there is a difference because the roads are used daily while branch lines are not, but insofar as the movement of grain is concerned—and here I am quoting from what the Farmers Union have said in their brief—they claim that . . .

Senator Grosart: Mr. Chairman, I am not a member of the committee and I do not know if I am entitled to raise a point of order, but I would have very great doubts as to the propriety under our rules of introducing a document that was presented to another committee only this morning. It is normal practice not to quote a document that is not available. I just raise the point because it seems to me to be rather out of order to be discussing a brief presented by the National Farmers Union or anybody else to another committee this morning.

Senator Molgat: If you would allow me to finish, you will know that I am not quoting from the brief. I am quoting a statement made before another committee on April 10.

Senator Grosart: It makes no difference.

Senator Molgat: This was certainly available on April 10.

Senator Langlois: You could ask a question without referring to it.

The Deputy Chairman: Yes, you could ask a question without referring entirely to that brief.

Senator Molgat: It is claimed that there were 15 ships waiting in Vancouver, with another 11 due that week. The real purpose of my question is with regard to the policy of the railway in the purchase of rolling stock for grain. I refer to the 6,000 hopper cars for the railways, which I consider to be a railway responsibility.

Mr. MacMillan: You are really asking me to explain government policy, and I am not at all sure I am the proper person to do that. I anticipate that the first 2,000 cars were ordered as a means of alleviating the burdens of the railways in equipping for the movement of grain. That is not the right way to put it, because you will be very familiar with the implications of the Crows Nest Pass rate and everything that goes with it. The railways have traditionally said that they make no money on the movement of grain; as a matter of fact, they lose money on the movement of grain.

The facts are that we, the Canadian National—and I speak only of the Canadian National—have been able to move our share of the grain. It will be recalled that since the beginning of grain growing in Canada the lands contiguous to the lines of Canadian Pacific have normally provoked the larger share of the national crop. The percentage runs somewhere between a 45-55 split. In recent years the actual movements have not been consistent with that split. At this point in time we have moved more grain since the beginning of the crop year, last August 1, than Canadian Pacific. Of the 2,000 units that were put into service, we received slightly over 900; Canadian Pacific got the remainder, because they followed the old split. Again utilizing the potash hoppers, to which I referred a while ago, and other equipment, we have always been able to maintain movements. Right now we have something of the order of 12,000 cars or car equivalents in the business.

Senator Molgat: Is the railway maintaining the same number of cars in the grain trade owned by the railways? Is it reducing its number of cars or increasing them?

Mr. MacMillan: For all practical purposes we are maintaining the same carrying capability. I use that phrase because traditionally grain was moved in Canada in small boxcars, 40-ton cars. Now a covered hopper car will handle 1½ cars, so we translate that into car equivalents. Our grain fleet basically was comprised of old boxes, which have been taken out of service because of antiquity, obsolesence and wear and tear. Very late in the summer last year we again started to repair for the grain trade. I think we started with 1,200 cars and we were up to 1,400. Normally we would have scrapped them and burned them. Because of the pressures on grain movement, we have inaugurated a rehabilitation program and put them back into service. I think Canadian National has done its share of providing for the movement of grain.

Senator Langlois: On what basis are these covered hopper cars supplied to your company and CP?

Mr. MacMillan: The supply to us—I do not know on what basis you would call it. I have inquired as to whether it was a lease or not. I do not think it was. I think they were just allocated to us, and we maintain and operate them.

Senator Langlois: There is no rental charge?

Mr. MacMillan: No.

Senator Cameron: My first question arises out of Senator Molgat's question on the shortage of boxcars, and that has been answered. But I had a note here about anticipating needs, and the matter of additional boxcars was one of them. I wonder if the need was anticipated sufficiently far in advance. I must say that in connection with this provision of cars by the government, with no rental or anything like that, I think we are embarking on a very risky prece-

dent. Are we going to go on doing this? What do you see as the future?

The second thing is—and this again comes under the heading of anticipating needs—I understand that with the larger boxcars that we have been talking about, we are finding now that the road beds are not standing up to them. Again, it would seem to me that this use of heavier boxcars should have been anticipated and that should have meant the road beds being upgraded.

Mr. MacMillan: This opens up a brand new subject and a most interesting one. The railways in North America ten or fifteen years ago decided upon what really is an equipment philosophy which was different to the rest of the world. We went into rolling stock capable of hauling very, very large loads, a load limitation of I think 263,000 pounds. This is to be compared with the old 80,000 pound boxcar that we were talking about a minute ago.

It came into being as a direct consequence of the evolution of engineering techniques that made it possible to do that kind of thing, associated with the advent of the diesel electric locomotive. The diesel electric locomotive has very great tractive effort and lends itself admirably to massive movements in a single train. These are accomplished, in most instances, by the power being put in the front of the train but the technology permits of its being divided, some in the front and some in the rear, and drones can be scattered through the train every 30 or 40 cars. This was mainly a development which took place in search of economies of operation—and so it was.

Associated with that, and arising at the same time, was the beginning of unit trains, where the train was totally comprised of cars identically the same, loaded exactly in the same manner and running on a regular basis between Point A and Point B, and then returning empty. Everyone thought that this was the dawn of a new era; but we discovered with the passage of time that very great damage was being done to our track, because of the combination of forces, which have now been pretty well isolated. The Canadian National was the chosen instrument of the American Association of Railroads to research this.

We discovered that weight was a contributing factor and that speed was a contributing factor, but the most difficult additional factor was the repetition of forces that flowed from the utilization of the same cars the same way over the same piece of track. It has been necessary for us to try to build variations into this, variations in speed and preferably variations in the load, to change the pounding that takes place at exactly the same moment as each car passes over it.

We may have made a mistake in going to the very large cars, and this is very much in the "think tank" at the present time as to whether we should go back to the lighter car.

Senator Riley: Could it not be overcome by distribution of the load in each car?

Mr. MacMillan: These cars are virtually all loaded mechanically. If the train is loaded with grain, then the loading machinery would do it. But the train may be loaded with coal, iron ore, potash or phosphoric rock, sand, gravel, petroleum products, oil, crude, gasoline. So, as I say, we may have made a mistake. We are having a good look at it.

Senator Cameron: I understand that practically all the line elevators which exist on the Prairies today are obsolete also.

Mr. MacMillan: That is right, many of them are.

Senator Cameron: This is a very important factor in the supply of grain.

Mr. MacMillan: That is correct.

Senator CAmeron: That, however, is a subject for further discussion.

I would like to discuss a matter, Mr. Chairman, which I feel very definitely relates to another discussion. I should like to suggest that we set aside some of the time of this committee to discuss the role of new technology in transportation. For example, part of this question will relate to Air Canada, but I believe we are committed to spending billions of dollars on new airports, one at Ste. Scholastique near Montreal and another at Pickering in Ontario. In my opinion, we should question the validity of such a decision for the reason that in many countries the answer to moving people is not the aircarft: it is the light, fast train. In that respect, I have the impression, perhaps incorrectly, that Canada is not doing as much as it could in moving into the future with light, fast trains for transporting people. The Rapido is certainly no answer. We talk of a speed of 90 miles an hour for this train which, in my opinion, is not good enough, although I understand the reason for the slowness. If we are to attain the speed necessary, we should have the type of train coming down from the British Rail Research Centre in the north of England, at Derby. They come on a regular run of 115 miles an hour. Some of the European and Japanese trains make 130 and 150 miles an hour. The Rapido therefore is not in that category. It may not be as much the fault of the train itself as the facilities for passing on a single track.

The Deputy Chairman: Senator Cameron, I suppose you know that we will have an opportunity to study that question when we have that "Conference on the Future" in the next few months.

Senator Cameron: That is right, but I think we should raise the question with Mr. MacMillan so that we can return to this in some detail, because it is very important to the economy.

The Deputy Chairman: We might as well, then, keep Mr. MacMillan with us.

Mr. MacMillan: If you ask me to return at that time, I will be delighted.

Senator Cameron: I think this is very important, both to the railways and Air Canada, because I certainly think that for a distance of 300 or 400 miles the answer is the light, fast train rather than the aircraft.

The Deputy Chairman: Has your research department not investigated that question, Mr. MacMillan?

Mr. MacMillan: I could speak to you, literally, for two days. We can tell you about every train in the world. While the Rapido is a conventional train, it has no counterpart in the world. We must bear in mind that it runs under very severe limitations, one of which is the restricted speed at level crossings, of which there are over 400 between Toronto and Montreal, at which we must reduce speed. The Hokaido train you refer to in Japan runs on a special

track which in effect has no curves; they go into the curves so gradually that there are, in effect, no curves. Again, the engineering is such that it has engineered the hills out. The Japanese train is a one-of-a-kind operation with a fast train from Tokyo to Osaka running at an overall speed of 125 miles an hour. It does a fine job. It cost them $1,100,000,000 to build a track. There is nothing technologically unusual about the railway equipment.

TheDeputy Chairman: What is the cost per mile?

Mr. MacMillan: I think it is 330 miles. Divide that into $1,100,000,000, and you get about $3,750,000 a mile.

I think the most advanced train running on conventional trackage in the world is the turbo train from Montreal to Toronto. So far as its speed capabilities are concerned, it does not begin to approach its top speed; because of the level crossings, we have to slow down all the time.

The Deputy Chairman: Mr. MacMillan, you will have to appear again before the committee.

Senator Langlois: I would like to ask one short question, and I would preface it by giving some background. Two years ago I went with a group of parliamentarians from Ottawa to Washington to study the transportation problems there. We met many of your counterparts there. They were mostly personnel of Amtrak. We were told, in the course of our discussions, that they had experience with what they term standing derailments—meaning equipment that was lost sight of in the marshalling yards for so long that the roadbeds had eroded. This was in relation to the problems of Penn Central. Have we experienced that kind of casualty in Canada?

Mr. MacMillan: Not that I know of. The president of Amtrak is an old friend of mine. I know him very well.

The Deputy Chairman: It is now past 12.30. If there are no further questions, we will adjourn, and this afternoon we shall hear from the representatives of Air Canada. Should we ask that some of the representatives from CNR be present?

Senator Cameron: If Mr. MacMillan could stop over, it would be useful to have him here.

The Deputy Chairman: We all know that Mr. MacMillan has a good deal of work to do. I would like to have him remain, but if we do not need his presence—

Senator Grosart: Could we ask whether Mr. MacMillan could stay?

Mr. MacMillan: I have a commitment in Montreal at 5.30 p.m. If you are not going to sit again until after 3 o'clock, I would have to be excused very soon after the committee sat. If the committee is going to embark upon a study in the nature of what we have been talking about, I would like to come back.

The Deputy Chairman: Thank you.

Senator Grosart: It would be for the chairman to refer this matter, by resolution of the Senate, to the committee, and the committee could sit on this matter. Perhaps there could be more general reference to the whole question of CNR. The committee is not limited to studying this particular bill, as long as it has a reference from the Senate.

Senator Cameron: I was going to suggest that. We could ask this as notice, that we would like to obtain a reference to defer this matter to the Senate and direct the committee to go into the whole matter.

The Deputy Chairman: Thank you, Mr. MacMillan. We again extend to you our best wishes.

At what time should the committee sit this afternoon?

Senator Langlois: I move that we adjourn until approximately 3.30 p.m.

The committee adjourned.

Upon resuming at 3.30 p.m.

Senator Maurice Bourget (*Deputy Chairman*) in the Chair.

The Deputy Chairman: Honourable senators, we continue our consideration of Bill C-5. This afternoon we have with us as witnesses Mr. Claude Taylor, Vice-President, Public Affairs, Air Canada, and Mr. Michael Cochrane, Vice-President, Finance. Without saying anything further, I would ask honourable senators to ask questions of our witnesses. Who would like to fly first with Air Canada?

Senator McElman: As one New Brunswicker to another, Mr. Taylor, looking back over several years I note that the Viscount aircraft used to have first-class and economy sections. In more recent times there has been one cabin. I am sure you must have checked out the economics of operating similarly with the DC-9, particularly on the shorter hauls. What are the economics of maintaining a first class section as against using the space that is available for full economy flights with the DC-9?

Mr. Claude I. Taylor, Vice-President, Public Affairs, Air Canada: Senator, as one New Brunswicker to another, may I say that the Viscount is being phased out of service this spring. We do have some DC-9s, what we call the short DC-9, in a one-class configuration. If my memory serves me right, there are six of them. They basically operate on the sort of hubs of Toronto and B.C., and you occasionally see them here in Ottawa on the Ottawa-Toronto and Ottawa-Montreal services. These are economy DC-9s.

With regard to the economics of operating the so-called bigger DC-9s with first class and economy sections, the number of seats in the first class section in those aircraft has been reduced over time as the volume of traffic for the so-called economy sections has shown an increase. We have attempted to maintain a semblance of first class service, even though only as a fairly small percentage, on the majority of routes we operate in response to public demand. I recall that, when we changed the Viscount on routes on which there was no other service operating, we faced some fairly severe criticism because there was no first class service available on certain routes. Certainly I think your assumption is quite right, that the demand on most routes in increasing for economy class service. In that sense it is more to our advantage to provide that in a one class aeroplane if we can and still meet the demands of the public. However, there is a demand, even though small, for first class service on the majority of routes.

Senator McElman: If on the DC-9 the available space were used totally for economy service, would it bring more or less revenue than using similar space with fewer seats at the first class rate?

Mr. Taylor: Once you get an aeroplane with the number of first class seats that we have now and you remove one

row of first class seats, basically all you can get in is one more row of economy class. Essentially you are replacing four first class seats with five in the DC-9, where it is two and three seats, so you will get five seats instead of four. The relationship of our first class and economy fares in North America is, I think, 145 per cent, so the economics are not that different.

Senator McElman: That is one row of seats you are speaking of?

Mr. Taylor: That is right.

Senator McElman: I am speaking of the whole thing.

Mr. Taylor: We have only three rows, I think it is, in the stretched DC-9s. It is my understanding that if we replaced them we could not get four rows of economy in; in other words, there is not enough space to get four rows, otherwise we should be down to shorter than the 32-inch pitch on the present economy. In the DC-9, I think in the first class it is a 36-inch pitch and in the economy it is 32; there is only four inches difference in the distance, so you would not pick up enough by removing those three rows; you would pick up only roughly 12 inches and lose 32 inches to get in an additional row. Once you get down to so few first class seats you do not pick an additional row; you pick up five seats for four, really, at that point.

Senator Langlois: What is the difference of the cost of operating the regular DC-9 compared with the extended DC-9?

Mr. Taylor: The cost per hour would be somewhat different. As to seating, we are talking about 94 versus 72; I think that is the seating configuration difference between the two areoplanes. The cost per hour for the areoplanes is slightly different, but the cost per seat-mile between the two aeroplanes is fairly close.

Senator McElman: The reason I asked my question was that I have been led to believe that in the space you would pick up where the partition itself is, plus the additional space, it would be possible to get one additional line of seats totally.

Mr. Taylor: My understanding is—and I stand to be corrected—that it would require an adjustment in the galley space in the front of the first class section as well; there would be an adjustment to that whole cabin in order to pick up one more row of seats.

Senator McElman: I have noticed on the Maritime runs, which I see a great deal of, that there is a strong tendency away from first class to economy flights, particularly the last flights out of Montreal heading east; the economy section is generally full, and on many occasions the first class section is at least partially empty, sometimes with only two or three passengers.

There is one other factor that I will mention, although perhaps it does not have too much to do with your financing. This first class service and the "free booze" involves two drinks per passenger. I do not travel first class myself, except when I am forced to by reason of no availability in the economy class.

Senator Riley: You take some drinks, though, if you do.

Senator McElman: I was about to say that, Senator Riley. I appreciate your assistance. Whenever the free drinks are available, I naturally do so. I say "naturally", because I do drink.

Senator Langlois: I do not think you could call that free drinks when you pay 45 per cent more to get them.

Senator McElman: A thing that I find obnoxious and that I have seen—and I am not speaking particularly of the Maritime runs now, as I have seen it on many runs—is that many of the first class passengers are determined to get the difference in the fare in drinks. I have seen instances of a man and a lady, presumably his wife, aboard, where the two drinks are taken for each, and one person consumes all four and is sloshed. I have seen cases where there was no effort made to prevent this sort of thing happening. In more cases than I think it should happen, such passengers become highly obnoxious to others within the cabin.

Senator Riley: How do you know, when you do not travel first class?

Senator McElman: I have travelled in the first seats in economy with Senator Donald Smith on a number of occasions, and we have both witnessed this. I wonder if it is something that should not be re-thought by Air Canada.

Mr. Taylor: It is one area that is of some concern to our in-flight people, not only in the first class part where they get it for free but also in the other cabins where, provided they pay for it, they can still have the four that you are referring to.

Senator McElman: There is some incentive in the first class.

Mr. Taylor: There is an incentive in the first class; that is true. It is one of the things that does concern us, and in our training of our in-flight people. We try to do all we can, without having the crew glued to the passengers. With the DC-9's the stage length of the flight usually is about two drinks' worth if you drink at a normal rate and four if you drink fast. What does concern us is the longer flights in some of the bigger aircraft. The in-flight crews do attempt to apply some moderation on a customer, where they can, but of course in most cases the customer has the final say.

Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel: The customer is always right!

Senator McElman: Not really.

Mr. Taylor: Any incidents that we have had, I must admit, have been very few.

Senator Langlois: It happens only on flights east of Quebec!

Senator Molson: I should like to follow through on Senator McElman's question. The first class treatment in Air Canada does seem to be largely that they give drinks. There are the Maple Leaf lounges in some places and they are very comfortable. However, the first class baggage, for example, comes off last. You have a sign up in places which says "Holders of first class tickets," and you are at the end of the line in the same place. There is nothing done really to justify the extra fare, that I know of, except the free drinks and, perhaps, the meal service. It would seem to me that there is ample room for improvement in regard to the baggage, to see that it does not get lost; and, if it does not get lost, to see that it does not come off necessarily last. A lot of real comfort could be provided. If you are

going to charge a substantially extra fare for the same flight, you could do a lot for the passengers, apart from the free drinks.

Mr. Taylor: The principal added benefit that accrues to the first class passenger for the additional fare is the seating comfort. I admit that in the DC-9 the first class versus economy is not that much different in seating comfort, but in other aircraft the additional leg room is an added benefit to the first class passenger. On top of that there is the meal, although that is not so much different.

Senator Molson: On short flights this does not apply.

Mr. Taylor: The seating comfort is the principal added benefit in the first class.

Senator Molson: The first class passenger pays for the baggage. Why, then, has it to come off last? Why is there a sign up saying "First class ticket holders" and then you have a flight without first class people? Quite frankly, I do not think that for the free drinks it is worth it.

Mr. Taylor: I would tend to agree that the two drinks are not worth it. One of the problems at the airports is to try to apply first class checking of passengers because what you end up doing is isolating personnel and specializing. If there are no first class passengers to check in and there are economy passengers to check in and the economy people see other personnel under-utilized, we get complaints from the economy class. Once we start specializing I agree that, other than the in-flight part of the added benefit, it is very difficult, if you are going to give all the people on the ground a reasonably good service, to isolate the service that is provided to first class passengers. I think we ought not to hold out to them that we can do this if we cannot, and we are not doing a very good job if we cannot. In most airports we do not try to isolate the first class service on the ground.

Senator Molson: I think baggage is one area. I do not think the method of handling baggage makes anyone very happy. One has to pay a fancy price, and then there is more irritation generated by that than by anything else.

Mr. Taylor: I hope that we can improve the baggage handling for both types of passengers.

Senator Molson: So do I.

Senator Cameron: First of all, I would like to follow up on the question of seating. It seems to me that in Air Canada in the economy space, particularly the DC-8s going across Canada, the seats have been pushed so closely together that they are absolutely uncomfortable and one's knees are knocking against the seat in front.

Senator Martin: You are too fat!

Senator Cameron: No. Some people should try for a Procrustean bed, but this is the worst I have ever seen in the last year. I do not know how many DC-8s go out of Toronto in the evening to Calgary and Vancouver, but some of these flights are just uncomfortable because the seats are so close that your knees are banging against the seat in front all the time.

Mr. Taylor: Senator Cameron, there have been no changes. I would accept that the seating dimension, as we refer to it in the economy cabin, is 32 inches, but this has not been changed in the last number of years. In fact, over the years the design of seats and what they call the cantilevered seating, which is where there is more space at the back of the seat than in front of you, has made it appear there is a greater distance, when in fact there is not. The difference is in the design of the seat.

I am a little baffled to understand why it would appear that the distance has been reduced because, in actual fact, the seat dimension in the economy cabin in the DC-8s has not changed in the past 7 to 10 years; it has been 32 inches.

Senator Cameron: Are you sure this is the case in all lines, with no exceptions?

Mr. Taylor: I would be glad to pursue it. My understanding is that there has been no basic change. We have re-designed some seats and there are different types of seats put in, but in all of these cases they should have made an improvement rather than a deterioration.

Senator Cameron: I am not the only one saying this. Others have complained that this has happened fairly frequently, that they are banging their knees against the seats in front all the time. I presume that happens on all flights.

Mr. Taylor: I would be glad to pursue that, Senator Cameron but, as a general rule, unless it was a particular aeroplane which was under a special configuration for a special movement, they should have all been at roughly 32 inches.

Senator Cameron: It must have been my misfortune to be on one that had a special configuration. However, you say you will look into that.

Now, relating to a question Senator McElman asked, with reference to the flights going west leaving Toronto at six or seven o'clock in the evening and going through Calgary to Vancouver, I find that the flights tend to push booze for about two hours, which means that it is nine or nine-thirty before you get anything to eat. Time and again I have watched this happen. You end up getting your dinner at about nine or nine-thirty, when you are over Winnipeg or sometimes beyond Winnipeg.

I have nothing against having a drink, but it seems to me that excessive attention is being given to pushing liquor for too long a time at the expense of people who may not want any liquor at all or who certainly do not want to drink for two or two and a half hours. This is not something which has happened only once or twice. It happens all the time.

Mr. Taylor: These are flights going from Toronto to Calgary and Edmonton, are they?

Senator Cameron: And Vancouver.

Mr. Taylor: I just do not have at my fingertips the sort of serving time on that particular flight, but I take your point as being a valid concern of yours and I will be glad to follow it up.

Senator Cameron: It is particularly bad on the stretched DC-8s. It is not so bad on the DC-9s because there are not so many passengers on them.

Mr. Taylor: I will be glad to pursue that for you, Senator.

Senator Cameron: The next thing is the question of operations. First, there is the generally poor service at the ticket counters. I refer to the time it takes to get a ticket processed; and, particularly in this town, if you use the telephone to try to make reservations you are diverted to

Montreal. You may get a reply in a few minutes or it may take you half an hour to an hour, instead of being able to get some action right here in Ottawa. This was a move made last year, to centralize everything in Montreal.

Mr. Taylor: Well, if I can take a moment, senator, just to talk about the telephone answering service, this is something that certainly has concerned us for the past couple of years, particularly last summer when the volume of traffic was considerably above that which had been forecast and on which the general facility and manpower requirements had been estimated. This was brought about, of course, by a number of things. First of all, we had our own rotating strikes, and then we had the rail strikes and the CP strike on top of that.

We recognize the valid concern of people not being able to get through on the telephone. There is nothing more frustrating, and I would admit this. The only thing I can assure you of, senator, is that we have established quality control programs for this function. We have established standards such that 80 per cent of our calls should be answered within 20 seconds. We have monitoring programs to follow up on this. The fact that the Ottawa reservations calls are answered in Montreal should not be an excuse for providing poor service, because in a large operation like that, where there is a volume of calls throughout the 24 hours a day, we ought to be able to provide you with as equally good a service as if the calls were being answered in Ottawa. So this is not an excuse for poor service. It is a problem that we have. It is one which we recognize and it is one which we are working very hard to try to get to a level of acceptability which you and our other customers feel justified in demanding. So, if you have specific complaints, I would be glad to follow up on them.

With respect to the general complaint, I can identify with it, and I can assure you that we are working extremely hard to try to overcome it.

Senator Cameron: Well, I wish you could sit in my office some time and try to make a reservation. You would soon see how good your service is. However, we will leave that.

The next point is in the area of what I call poor maintenance. These are small things, but they are irritations.

First, frequently I find that the reading lights are not working. For example, I have made the trip to the West three times in the last three months and the reading lights were not working at all. On an evening flight which lasts three and a half hours, going from Ottawa to Calgary, it is a nuisance if you cannot read. This is just a question of somebody falling down on his job.

Second, very often the seats stick in the back position and will not stay upright. This is true, even when the flight attendant tells you to put your seat in the upright position; you cannot do it. Again, that is sloppy maintenance.

Third, there is the question of baggage. Baggage handling has already been referred to. The last time I went to Calgary I waited 45 minutes to get my bag off the plane. I understand that the baggage door became stuck or something of that sort, so that probably was an unusual situation. In any event, I try to avoid having my bag handled at all; I try to take one which will fit under the seat.

Again, from what I have seen, I am sure that the handling of baggage is not only slow but is atrocious in terms of wear and tear on the baggage itself, owing to the way the bags are thrown around. I have had two bags damaged when I have used the baggage-handling facilities. But these are small things which I just wanted to record for you.

Now I would like to come to another point. In using the larger aeroplanes, particularly out of Ottawa to Toronto, you cut down the frequency of flights. No doubt that was an economy move to try to get more efficient operation out of the larger flights, but it is an inconvenience on what I would call the shuttle runs—from here to Toronto, from here to Windsor or to Montreal.

Mr. Taylor: On the question of frequency, senator, certainly in these high-density markets it is not our intention to put larger equipment on in order to reduce frequency. Our intent and our objective in terms of frequency is to have frequency spread throughout the day. As we all know, the majority of people, no matter where they are travelling to or from, want to leave in the morning and late in the afternoon, but we attempt to provide balanced frequency throughout the day. The objective of providing the larger aircraft, particularly in those periods of the day when the volume of traffic is high, is that with the frequency of services being operated today and the limitations on terminals, where you can put up a 1011, let's say, with 265 seats, it would, you know, take about three and a half or four DC-9s to place around the terminal to carry that many passengers. So the large equipment is put on at the peak periods of the day in order to move the largest volume of people in the most acceptable manner. Certainly, we attempt, if at all possible, not to see frequencies drop below that which is acceptable to the travellers between any two points.

Senator Cameron: Have you given any thought to using a shuttle service similar to the one operating between Calgary and Edmonton? Air Canada did operate the service. They claimed they were losing money on it, but since Pacific Western Airways took it over they have doubled the number of flights and it is loaded all the time. Why couldn't Air Canada do that? We are perfectly happy with the schedule now between Edmonton and Calgary. Why couldn't Air Canada do the same thing between Ottawa and Toronto or Ottawa and Montreal? I believe you do have what amounts to almost a shuttle service between Ottawa and Montreal.

Mr. Taylor: I have two comments. First, on the Calgary-Edmonton service, I have flown on that and it is a very acceptable and good service. The reason we did not operate that service, the basic reason, was that at the time we were negotiating about the airports in Edmonton the municipal airport was supposedly going to close when we moved to the international airport. The success of that service by PWA is that it operates at the municipal airport.

Senator Cameron: That is a big factor.

Mr. Taylor: My second comment is on the question of Ottawa to Toronto. As you know, we are operating what we call a rapid air service between Montreal and Toronto, and that is building up to the point where it is becoming very close to a shuttle service. It is not a guaranteed seat in the sense that some of the shuttle services are operating, but it is a service almost every hour on the hour. With the expansion of that in the fall of 1974, it is our plan to add Ottawa to that service in 1975 on a so-called rapid air service, which would be almost, as we would term it, a commuter service between Ottawa and Toronto as well.

Senator Cameron: That is good news.

My final question has to do with that universal source of complaint, that monstrosity, Terminal 2 in Toronto. If you go from here to Toronto on your way west you come in at one end of the terminal. If you happen to have heavy baggage—I do not, but lots of people do, particularly elderly people—there was a time when there was not even a dolly that you could put your bags on. Fortunately, this has been corrected; I see lots of them there now. But often there would be no porters, and it meant you walked practically half a mile to go out the other end. Coming back from the West it is the same thing. This is a very great inconvenience, particularly to elderly people or those who may be handicapped. Surely, there must be a better way of handling the egress, the departures and arrivals and connections in that airport that you have at the present time.

Mr. Taylor: Senator, I think the best thing that we could do for people who do not have to stay in Toronto is to try to make sure the flight does not go through Terminal 2.

Senator Cameron: That is right.

Mr. Taylor: And this is our objective, to get as many services as possible, overflying, as we call it, both Montreal and Toronto, so that people can go from Halifax to Winnipeg, or Ottawa to Winnipeg, or Ottawa to Calgary or Edmonton on a direct service basis. I think that you will see this in the summer schedule, which is improved and is continuing to improve, by which we will be by-passing these large, complex terminals, which there does not seem to be any answer to, once you have very large volumes of traffic points such as Toronto and Montreal. It is, however, a great hardship on people who connect there, and it is our firm objective to overfly these as much as possible for people who are not destined to that particular city.

Senator Cameron: Well, I hope it will improve. However, related to that is the fact that very often you want to stop in Toronto on the way west, or coming back, so that you have to use Terminal 2. Related to this fact is something that really burns me up, and that is the $25 landing charge. If I go from here to Toronto and land there, and stay over four hours, that's $25 on my ticket. If I have to stop in Winnipeg, as I sometimes do, there's another $25, and if I wish to stop in Regina and Saskatoon, it is the same thing.

Mr. Taylor: Senator, I am aware that we have what we call a stop-over charge. I am surprised to hear you say it is $25, and I would like to check that and discuss it; but there is a stop-over charge within the tariff structure for people who do stop over rather than go through.

Senator Asselin: It is ten dollars if you stop over at Montreal for the night; it costs you ten dollars more.

Senator Cameron: It is a sector-on-sector fare; that is what you call it, but the net effect is the same.

Mr. Taylor: That is right. It depends on how you define it. But this is a very common practice, senator, in all North American tariff making. The amount of the charge I would like to verify, however.

Senator Cameron: Well, I can show you the tickets. Twenty-five dollars for each stop at Toronto, Winnipeg and Regina—seventy-five dollars on a one-way ticket.

Mr. Taylor: I would like to discuss that with you, senator.

Senator Cameron: This is indefensible. Well, all right.

The Deputy Chairman: Senator Grosart.

Senator Grosart: First of all, to follow up Senator Cameron's comment about Terminal 2, I know Air Canada did not build it and so cannot be expected to take the blame for its tragedies. Commonly, now, the taxi drivers call it "Cardiac Alley", and a doctor who is a member of Parliament has told me—and I walked it with him—that it is a definite hazard, to anyone who has any kind of heart problem, to walk its entire length.

Is it the intention to do anything about it? Is it the intention to put in enough of these passenger tractors, or whatever they are called, or to put in a moving sidewalk or a lateral elevator? Is anything going to be done about it?

Mr. Taylor: Senator, I wish we could cut Terminal 2 in half and make two small terminals out of it, but we cannot. We have to make the present building work somehow, because it is there. We have ever-increasing volumes of traffic coming out of Toronto and through Toronto, and so we have to use the facility. There are three alternative plans to try to improve the walking distance or to try to reduce the walking distance of Terminal 2. The finger that is commonly referred to as the east finger, I believe it is, which is in the direction of gate 80, is the longest walk from the check-in point, and the object there was to consider both moving sidewalks and the addition of the so-called golf carts or battery operated mobile carts. Both of these have real logistic problems in them, and I know that the MOT design people, along with our own design people, have considered and are still considering both of them, to see whether or not there is any way to overcome the difficulties that both of them encounter. If the moving sidewalk, for example, is put down the centre there is the problem of crossing. There are many problems that we could get into, but certainly we recognize the problem of Terminal 2. The major thing that was done at Terminal 2, which did reduce to a very great extent the amount of walking, was to try to use it as it was designed, which was to have the passengers arrive and walk through the building and on to the aeroplane. This can be done with the majority of the gates which are international and long haul; but with the gates in the east finger it is difficult to do that because you cannot arrive opposite, and there are gates on both sides. The distance in that finger alone is not that great, but if you have to go from one end of the building to the other it is fairly critical. So there are these carts which are available for use for people who have cardiac problems, or any other problem that causes them to be unable to make the distance; but it is not possible to put enough of these carts in that finger to accommodate all passengers. However, they are there and available for people who do need them.

Mr. Hopkins: You do have wheel chairs.

Mr. Taylor: There are wheelchairs available throughout the terminal.

Mr. Hopkins: If you reserve them in advance.

Mr. Taylor: You can reserve them in advance, or you can take your chance on their being available on arrival. However, there are these golf carts available for people who do need them in that finger.

Senator Langlois: Are the major companies consulted by MOT when an airport is in the design stage? Since you are the prospective users of these facilities, do they consult you?

Mr. Taylor: Yes. As a matter of principle the airport design people do consult the air lines design people, though the people who own the terminal have the final say in it, of course. The problem of Terminal 2 was that it was an added terminal, designed to accommodate the overflow of the first terminal, and I think therein lie some of the problems of Terminal 2.

Senator Grosart: Well, I am glad to know that at least the matter is under consideration. I think it would be good public relations to put up a sign saying, "Will you please be patient? We are going to do something about it." It is certainly very annoying for people. I have seen many people in real distress, and I have looked around to try to find a cart, and it is almost impossible. I do not know how long you would have to wait. I do not know whom you would ask. The last time I asked I got a very insulting reply, and that was, "Take a wheel chair!"

Mr. Taylor: Your point is well taken, senator, and we will certainly pursue it because the carts should be available on a regular basis.

Senator Grosart: The public is very concerned, because all you hear are serious complaints from people about the inconvenience involved.

Now, if I could ask you a few questions about the financial statement. In the statement of income and retained earnings there is an item of $200,000 for dividends. How do you declare a dividend when you are losing money?

Mr. Taylor: Just to share the stage, I shall ask Mr. Cochrane to answer that question.

Mr. Michael Cochrane, Vice-President, Finance, Air Canada: The dividend is paid to the CNR who owns all of our capital stock. As far as losing money is concerned, we were not losing money in those years, and when we paid those $200,000 as a dividend we were making money. We have had a profit of $6 million and $8 million in two years.

Senator Grosart: Well, I will take your word for this.

Mr. Cochrane: It is on the statement.

Senator Grosart: I know it is on the statement, but I shall take your word for it that your accounts agree that it is properly called a profit.

Mr. Cochrane: I would not say it is an adequate profit, but it is a profit.

Senator Grosart: Then coming to deferred income tax which is in the balance sheet under assets, the fifth line, I take it this is on one year's operations. Would you care to explain this?

Mr. Cochrane: Well, it is not just on one year's operations; it is an accumulated amount. As you can see, it gets a little larger each year and from 1972 to 1973 it got still larger. So it goes up each year. For income tax purposes you are not allowed to declare obsolescence on inventory, but we know our inventory is becoming obsolete to some degree, as is the case in every business, and therefore we write it off each year and that, in turn, becomes an asset until such time as the inventory is sold.

Senator Grosart: Is your rate of corporate income tax the same as for any other corporation?

Mr. Cochrane: Yes, sir, our tax is calculated in line with all other corporations.

Senator Grosart: Except that you don't pay it.

Mr. Cochrane: No, sir, we don't because of the speed with which we are acquiring new assets which are depreciated relatively quickly.

Senator Grosart: Then in the statement where it deals with the source and application of funds, there is a very substantial decrease in working capital, something like $88 million. How do you live with that?

Mr. Cochrane: Our working capital deteriorated very substantially because we were forced to go to the bank for money in order to keep our operations going. Normally this kind of financing would have been long-term financing which would not have hindered our working capital; and had we had this bill passed we would have had the money so that we would not have had to go to the bank, and this working capital deterioration would not have taken place.

Senator Grosart: What is your indebtedness to the banks now?

Mr. Cochrane: I believe in the area of about $125 million, and this will be up to $140 million by the end of this month.

Senator Grosart: What are your limits?

Mr. Cochrane: Our current limits are in the area of $140 million.

Senator Grosart: So you are right down to the deadline.

Mr. Cochrane: Yes, sir. If this bill is not passed we will have to extend our line of credit with the banks, and it is to be hoped that they will agree.

Senator Langlois: I understand you have already extended it starting with $50 million, then going to $100 million and, finally, to $140 million.

Mr. Cochrane: That is correct.

Senator Grosart: Is that all with one bank?

Mr. Cochrane: That is with two banks.

Senator Grosart: Or with a consortium of chartered banks?

Mr. Cochrane: No, with two banks—the Bank of Nova Scotia and the Royal Bank of Canada.

Senator Grosart: Then, continuing with the application of funds, I see here "progress payments". What are they?

Mr. Cochrane: Payments on aircraft to be delivered in the future. We make progress payments as aircraft are in the process of being built.

Senator Grosart: Is this part of your contract with the manufacturer of the aircraft?

Mr. Cochrane: Yes, sir, it is a normal practice in the industry.

Senator Grosart: This would seem to be something that industry has learned from the relations between business and government during the war and after—simply getting

the government to pay for the goods before they were delivered.

Mr. Cochrane: That is right.

Senator Grosart: Nice work if you can get it!

Senator Riley: I have a supplementary question arising from this. Isn't this practice of progress payments the standard method of payment for all construction? It is not related only to government projects. If you are building a $25,000 house today, normally you have to make progress payments as the work proceeds.

Mr. Cochrane: Yes, sir, and in the aircraft industry it is normal, as I believe it is also normal in the shipbuilding industry.

Senator Grosart: All I can say is that it was not always so.

Then under the same heading my next question deals with "reduction of long-term debt." Do I take it that you borrowed money from the chartered banks to make payments on your long-term debt to the government?

Mr. Cochrane: No. That refers principally to payments to the Lazard Frères on the Rolls-Royce engines which we purchased and financed through them, and also to the EXIM Bank in the United States which is helping us finance our aeroplanes which we are buying in the United States.

Senator Grosart: So you are really borrowing from Peter to pay Paul, borrowing from the bank to pay off other debts, which is another good reason, in my view, why something should be done to clean up the mess that this kind of act is.

Mr. Cochrane: Your statement is correct, senator, in that we are borrowing from banks to pay contractual obligations with other lenders.

Senator Grosart: Well, most of us who are parents, if we saw our youngsters doing that, we would raise a little bit of hell. I know the reason is that this bill was not passed in Parliament for two or three years.

Mr. Cochrane: We certainly wish we did not have to do it.

Senator Grosart: I am quite sure of that, and I am sure that before we are through there will be a recommendation coming from this committee that we attempt to do something to clear up this mess of retroactive legislation. In this case you have two months to go, and then you will need another bill. When do you expect another such bill?

Mr. Cochrane: Well, we wish the other bill was underway now because, as you have quite rightly said, this expires at the end of June, and then in July we will be faced with another problem.

Senator Grosart: You will be faced with exactly the same problem as of July 1.

Mr. Cochrane: That is right, sir.

Senator Asselin: I have one simple question that I would like to ask the witness. When you have a waiting list for passengers, do you give any priority to senators?

I ask the question because I had a bad experience before Easter. I called your office in the city and was told that I was first on the waiting list. I went to the airport and there I was told by the clerk that I was tenth on the waiting list. I asked him whether I had any priority and was told there was no priority for senators or members of the House of Commons.

I waited three hours to try to get a flight. After three hours I was told there was no place available for me, and I had to come back to my hotel, stay over, and get a flight the following day.

My question is simple: Do we have any priority on the waiting list? And, if not, why not?

Mr. Taylor: I hope that we do not discriminate either in favour of or against senators. The priority system is essentially on a first-come, first-served basis under the waiting list procedure.

There are emergency procedures which are sometimes applied in what we call extenuating circumstances to accommodate particular cases, such as death cases, serious illness cases, and various things like that, in which there are procedures to apply. But generally we try not to discriminate either against or in favour of any group.

Senator Asselin: You will understand that I may be in Quebec City and have to be in the Senate in order to take part in an important vote. I am in public life. I have to do my duty. Why do you not give to a senator or to a member of the House of Commons priority in order that he might get to Ottawa?

Mr. Taylor: I am waited upon on many occasions by many people who would lead me to believe that their business is extremely important and vital to the welfare of their company or industry.

Senator Asselin: Our business is the most important.

Mr. Taylor: While I am sitting here with you I could agree that your business is more important than anyone else's.

Senator Langlois: Is your VIP service still in operation?

Mr. Taylor: I am not sure what you are referring to as "VIP service." I do not think we have anything that we could specifically identify as a VIP service.

Senator Langlois: You have a special number for senators to use.

Mr. Taylor: Yes, we have special accounts positions. We give numbers out so that you and other people can get through to the reservations office, and hopefully you can be dealt with without waiting in line on the telephone, as Senator Cameron said earlier. There are special accounts numbers, but the general procedures are, we hope, fairly universally applied.

Senator Langlois: All we get is a fast "No."

Senator Smith: Those numbers to which you refer are assigned to us in Ottawa. We get a number of a girl. The name of my contact is Mrs. Stewart. She is just the greatest girl in the world; I get exceptionally good service. But what do I do when I am in a small town in Nova Scotia? I cannot even get the Halifax office because it is foggy and everybody is on the phone; I get a busy signal, and then on comes one of those tape recordings.

I am paying a toll on this. I am 110 miles from the source of my information. I wait until my ear gets tired and I am talking back to this recording machine. I hang up in order to keep my sanity. I wait another five minutes or so and call again. This goes on for three successive times. Cannot

you give me a number that I can call outside of Paul Anderson's? I do not want to call a fellow like that who is busy all the time. I think we should have some kind of zenith number. If I have to make four calls to get my reservation changed, I should not have to pay $6 or $8. That is something definite that happened to me. The most annoying thing is these tape recordings that insult me; I cannot ask them questions.

Mr. Taylor: You cannot talk back to them.

Senator Smith: Where is zenith now?

Mr. Taylor: The zenith system is being expanded continually throughout the smaller communities into the reservation offices. The thing I wish would not happen would be the fog that rolls into Halifax Harbour and causes the reservation lines to be plugged. I do not know how we will overcome that. I guess we will not, really.

We cannot staff sufficiently to handle every emergency. We try to staff with lines and people to accommodate the demand we can normally expect to handle. If you would like to speak to me afterwards, senator, I can let you know where the zenith planning is in relation to your community.

Senator Smith: There is none in my area. There are travel agents in my area who have a zenith number, but I do not want to use travel agents. I want to do my own reservation and changes, because I have questions to ask. I think that a zenith number, if available to someone in North Bay and other Northern Ontario cities, should be available in rural areas. It seems to me that there should be the same availability of a toll-free service.

Mr. Taylor: I know that it is expanding, and I will try to follow up on that.

Senator Smith: Some of my friends mentioned this matter to me, and we get annoyed at the tape recordings. I know that it is due to the fog. I hope you will not think that we are attacking the company.

I had only one disappointing experience in my life regarding Air Canada. Outside of that I have no complaints whatsoever. I lost my temper with a young girl, to the extent that I rushed in to see the top man at the airport and said, "I don't know her name and I don't want her fired, but give her hell and get me on that plane out there." I had a sick person I was supposed to meet on the plane; I thought it was all arranged.

I have not seen her at the gate since and perhaps I was responsible for firing her. I would like her to know that I did not really want her fired and that I forgive her. But it was an awful thing to happen to me. It was a personal matter. I was terribly upset and I thought I would have a heart attack. I have no complaint about your ground crews in Halifax, Ottawa or Montreal, and I travel almost every week.

Senator Gélinas: Under the heading "Operating Revenues," there is an item "Incidental Services, $16,300,000." What would that item be for?

Mr. Cochrane: That primarily consists of services that we do for other airlines. We do work for Air Jamaica in the maintenance area, for CP Air, and other companies.

Senator Gélinas: Were there any losses with options that were not exercised for the purchase of new aircraft?

Mr. Cochrane: The answer to the question is: No, as far as I know. I will check and verify it to make sure, but I am almost positive there were no options that we did not take up and did not get back our commitment.

Senator Gélinas: There was no option on the Concorde?

Mr. Cochrane: Yes, there was. In the specific instance of the Concorde our money was returned to us.

Senator Gélinas: Are there any plans under consideration by airlines—not only by Air Canada, but airlines—to penalize passengers who book and do not show up or cancel their tickets? Is there a system such as they have on the railroads?

I had an experience recently. I do not wish to give examples, but I was on a flight the other day and had difficulty getting on it. There were three passengers in first class and twelve vacant seats. There was no stand-by, but I took a chance and went out. I know it is a problem. How can you penalize those people who book and do not show up, and the next day cash in their tickets with no penalty?

Mr. Cochrane: The answer to your question is definitely, yes. We are looking at this situation. We have been looking at it for some time. The matter is under very active consideration in the United States as well. There is one problem. It is very difficult to administer. We have not yet found a solution to the administration of the problem, because a man can phone up and make a reservation under his own or someone else's name and then not show up.

Senator McElman: I have a supplementary, Mr. Chairman. Conversely, is there any way a passenger who has a confirmed reservation can exercise a penalty against the airline for not giving him a seat as a result of it having oversold that flight?

Mr. Taylor: His only recourse, senator, would be through the courts. There was a recent case in the United States where Mr. Nader sued Allegheny Airlines on that very point and won a substantial award.

Senator McElman: That is a precedent.

Senator Graham: I should like to start off on a positive note and show some regional bias by saying that I think both the flight and ground attendants in Sydney and Halifax are as efficient and courteous as you will find anywhere in North America—and I say that most sincerely.

I share the concern of those honourable senators who spoke about the slow telephone service, particularly here in Ottawa and In Montreal. This is particularly true after hours when calls are deferred to Montreal. I do not think the system is working efficiently at all.

I also share the concern of those who spoke about damage to baggage. I can understand how baggage, over a period of time, can become damaged, but I think it is gross negligence to leave baggage out on the ramp when a flight happens to be delayed for a couple of hours when it is pouring cats and dogs with nothing done to shelter it. I have seen that happen within the past couple of weeks.

I should like to turn now to the subject of lay-over charges. I think this is a matter of concern to most honourable senators. I travel to Ottawa every week and on a good many occasions I have to stop in Halifax on government business, and the lay-over charge is $17.

This either happens early in the morning or late in the day. Before the rates changed, I was on a flight from Vancouver to Sydney. I got off the plane in Toronto to make a phone call and found that I had to go to a meeting. The result was that between 8 o'clock the previous evening and approximately 9 o'clock the next morning, the layover charge was $41.

I should like to concentrate on a discussion of the scheduling of flights in the Atlantic region, Mr. Chairman. I do not want to go into great detail.

I believe you suggested, Mr. Taylor, that last year you underestimated the volume of traffic during the peak periods. Is that correct?

Mr. Taylor: Yes, you could put it that way. Certainly, we had a greater volume of traffic than we had estimated last year, generally speaking.

Senator Graham: Can you tell us what the percentage was? Was it 4 or 5 per cent?

Mr. Taylor: It varied, senator. In the peak summer months when we had the various strikes, we had a much greater volume than we had anticipated. In terms of the full year, we were running at 5 to 7 per cent over what we had estimated for the full year. Certainly, in the months of July and August, when the various strikes were going on, we had a much greater volume than we had estimated.

Senator Graham: Do you have enough equipment on hand now to handle what you anticipate will be the demands during the peak periods this summer?

Mr. Taylor: Yes, providing there are no crises in terms of other modes of transport not functioning, as was the case last year. We feel confident that our equipment planning for this year will accommodate comfortably the traffic estimated and generally agreed upon.

Senator Graham: In respect of scheduling, what kind of consultation do you have with other airlines? To be specific, what kind of consultation do you have in respect of scheduling in terms of EPA and yourselves in and out of the Atlantic region? In other words, what kind of consultation do you have with EPA when you are drawing up your schedules as compared to their schedules?

Mr. Taylor: You have probably used the best example that we have in Canada, senator, because there is a closer working relationship between EPA and Air Canada in that region than there is between Air Canada and any other regional carriers. There is a very close working relationship in scheduling between EPA and Air Canada. The two carriers consult in the processing and planning; they consult prior to the publication of schedules, as well as in respect of the volume of traffic over the routes which they both serve.

Senator Graham: Is the scheduling of flights ultimately done by computer?

Mr. Taylor: The computer gets involved in processing a good deal of the data, but in terms of the forecasting of traffic over the routes and the scheduling of departure and arrival times, what we call the aircraft routing, is not done by computer. The long-term forecasting of traffic and what we call frequency without a schedule is largely computerized. However, when we get down to the actual scheduling in any given year or period, it is worked out very much on what we call a manual basis. In other words, we put into the schedules the actual judgments of the managers in the field, in the regions, along with the people who have to sit down and schedule the aircraft, the crews, and the other functions that surround the flight and the ability of the physical facilities on the ground to accommodate the schedule.

Senator Graham: We have had situations over the last two or three years whereby a difference of ten minutes in arrival or take-off time could have saved people up to three hours a flight time. It sounds incredible, but it is a fact. For example, going back to Sydney from Ottawa, or from Sydney to Ottawa, we often have a stop-over in Halifax of up to two hours, or a stop-over in Montreal of up to two hours, depending on which route the flight takes. I am wondering whether you anticipate any greater use of equipment in the Atlantic region in the upcoming year.

Mr. Taylor: Yes, senator. As you know, there was a fairly lengthy hearing, of some depth, into the adequacy of service in the Atlantic region recently conducted by the Canadian Transport Commission at which the various communities filed briefs as well as both Air Canada and Eastern Provincial. I think both airlines are thoroughly satisfied—that the schedules to be provided for this year and in the coming winter and summer of 1975 will meet all necessary needs. Hopefully, senator, you will be able to tell us that it meets your needs to a much greater extent than has been the case in the past.

Senator Molson: I have three questions, Mr. Chairman. I will take the simplest one first.

On page 2 of the notes to the financial statements there is note 3 which covers the depreciation and amortization of equipment. Under "Flight Equipment and Components" we find the Boeing 747, 16 years; the Lockheed 1011, 16 years if owned, and 15 years if leased; the DC-8, 14 years; and the DC-9, 12 years. I am wondering how this period for depreciation was arrived at.

Mr. Cochrane: What we want to do, senator, is line up depreciation with what we think will be the useful life of the aircraft in service, and at the same time work with the other carriers to make sure that we are depreciating our equipment at approximately the same rate, so that the resulting profits will be reasonably comparable. So it is a combination of those two factors which primarily set our depreciation policy which, of course, is concurred in by our consulting accountants or auditors.

Senator Molson: Does that mean that you believe a DC-8 will last two years less than a 747?

Mr. Cochrane: That is correct. That is what the industry has put as the useful life of these aeroplanes. Remember, this is after considering all factors, including, for instance, the noise factor, our ability to be able to change the engine on certain DC-8s to meet the noise regulations in different parts of the world. In other words, it is not just a mechanical thing. In addition, there is a marketability factor. As newer aircraft come in, some of the planes are changed or retired because they are not as marketable, particularly on competitive routes, which applies particularly in the United States.

Senator Molson: What is the oldest DC-8 you have?

Mr. Cochrane: Just about 14 years old. I think this is the year that our first DC-8 becomes fully written off.

Senator Molson: Is it going to be retired?

Mr. Cochrane: No, sir. We are going to try to keep our DC-8s in service. I think at this point in time it could be retired; in other words, it is fully depreciated. Secondly, it will be kept in service because of traffic requirements as opposed to any other reasons. To put it a different way, on a purely economic basis I think we could probably replace the DC-8s with new aircraft, and, even though the DC-8 is fully depreciated, in some cases, we would still be further ahead by putting a new aircraft in its place.

Senator Molson: I am interested in this, because I have so often seen aircraft written off, then kept in service and re-written off. In fact, historically I have known them go three lifetimes, if I am not mistaken. I am not speaking about DC-8s or any of those listed. I am just curious to know the basis.

Senator Langlois: I should like to ask a supplementary question on Note 3, on page 2. I would like to know the justification for treating leased aircraft as though they were owned by your company for depreciation and amortization purposes. I am not an accountant, and the reasoning behind this is beyond me.

Mr. Cochrane: For some time now the accounting profession has been discussing which way these aircraft should be treated. Where airlines have a substantial portion of leased planes it is becoming a generally accepted accounting principle to capitalize them in order not to distort the profit picture. If you have a large number of leased aircraft on which you are paying a firm price each and every year, the end result is that if you leave them as leased you will show a bigger profit in the earlier years than if another company doing exactly the same thing owned the aircraft. In order not to distort the profit and not to over-state it in the earlier years, compared with other airlines, we follow the generally accepted accounting principle of capitalizing the leases.

Senator Langlois: You do that whilst you are charging your leasing price in operating expenses.

Mr. Cochrane: You cannot do both, so for purposes of capitalizing the lease we show depreciation against those planes. In reality, you are quite right. We are actually paying out money for leasing, but we are not double charging it against our profits; we are only charging it once, and charging depreciation as opposed to the lease fee.

Senator Langlois: Your note is incomplete as it is.

Mr. Cochrane: Perhaps you would like some more elaboration on that.

Senator Molson: In Note 5 you say:

> There is a commitment to a supplier to use 100,000 hours of its services in each of the next two years; the cost of comparable services in 1973 was $1,700,000.

What is that?

Mr. Cochrane: That is a commitment to the CAE Company, which is located in Winnipeg, to supply them with 100,000 hours' worth of work a year which they are carrying out for us.

Senator Molson: That is 100,000 hours of work; it was $17 an hour before. You do not know what it is? The rate is not fixed. It is 100,000 hours. Is the rate to be fixed by some formula?

Mr. Cochrane: The rates are as fixed by negotiation with that corporation.

The Deputy Chairman: Is that the only place where you have that kind of commitment?

Mr. Cochrane: Yes, sir, it is.

Senator Molson: If the rate is not agreed, the contract does not stand.

Mr. Cochrane: I would assume that if we could not agree on a rate, either the contract could not stand or we would have to get a third party in to help us agree on a rate.

Senator Molson: I would like to go back to a reference to Air Jamaica, and there may be other airlines which I do not know about, in which Air Canada has some of the equity, does some operations and so on. This has been going on for three or four years. Would you tell us whether that has been profitable or unprofitable—without getting into great detail? Is Air Canada losing on this deal, or on that sort of deal?

Mr. Cochrane: I believe Air Jamaica is the only one where we have an investment in the airline and at the same time do work for them. That work has been profitable for Air Canada, and I assume also for any other airlines, and in some cases we have lost the contract to other airlines who said they would do it cheaper. In other words, it is an arm's length agreement.

Senator Molson: It does not cost Air Canada?

Mr. Cochrane: No, sir, that has been profitable business and we are very happy to have it.

Senator Molson: I come to the charter question. Air Canada has been expanding the charter business and has taken a position in Wardair. Would you mind explaining what the relationship is between the charter business and the scheduled business on a major airline like Air Canada? In serving the public, is the charter function normally an important function of a major airline, or is that in many cases a function of secondary airlines, or does it compete with the scheduled services that the airlines provide?

Mr. Taylor: Senator Molson, I will try to answer that to the best of my ability. The whole question of charter versus schedule is very much a marketing question. Air Canada is in the charter market. Mr. Cochrane will give me the percentage that the charter revenue is of the total. It is a fairly small total, in our case: it is 5 per cent of our business.

Essentially, we are in the charter business to protect our overall position in the scheduled market. That is the only reason. Essentially, we are in the charter business on two basic routes, the North Atlantic, largely to the United Kingdom, and one to the south, to the Caribbean islands. Basically, we are in there to protect our scheduled interests in those two markets. We are the scheduled carrier between Canada and the United Kingdon, along with BOAC, or British Airways, as it now is, and if we do not participate in the charter market and there is a charter market there, other carriers will come in and gradually absorb an increasing position in the market. Essentially, we are in the charter market to protect our total position

in any given market and it is a very small percentage of our total business, roughly 5 per cent.

Senator Molson: That is a very good answer.

There is one question I would like to have answered also. Do all the other major airlines, or most of them, have charter business that is comparable?

Mr. Taylor: Yes, nearly all the major international airlines, senator, do participate in the charter market in some form, and I think that it is basically for the same reasons that we do.

Senator Grosart: Can you say how much in dollars it has cost Air Canada to do short-term financing as against long-term financing, government financing, since the last time the Financing and Guarantee Act was passed? In other words, you pay a higher rate to the bank than you would otherwise. How much has it cost you?

Mr. Cochrane: I do not have that figure right here.

Senator Grosart: Can you make a guess?

Mr. Cochrane: I can tell you what it cost us last year alone. It cost approximately $600,000. This year it will cost us very substantially more than that: first, because the interest rates are higher; and, second, because we have a lot more outstanding, even though it will be for a shorter period, hopefully, if the act is passed now.

Senator Grosart: This is a charge against your operations entirely due to the fact that the Financing and Guarantee Bill has not passed through Parliament?

Mr. Cochrane: That is correct, sir.

Senator Grosart: I know you make comparisons with other airlines. How do your tariffs compare on a mileage basis with those of comparable airlines? I know it is difficult to make these kinds of comparisons, but I am sure you base your tariffs on comparative studies.

Mr. Cochrane: Of course, in Canada it is the same, obviously; but in the United States, which is probably the place where you can make the easiest comparison, our fares at this point in time are substantially below theirs. Historically, we have been above their fares, but over the last three years we got closer and closer to their fares on a per-passenger-mile basis, which is the only way to measure, of course, and we are now quite a bit below theirs.

It is amazing. It is the one product, I guess, or one of the few, that you can get cheaper in Canada than in the United States.

I believe that at this point in time our fares, flying within Canada, are cheaper than those of any other country in the world. I do not know of another country where you can fly for the same price as you can in Canada on a per-mile basis.

Senator Grosart: That is good news. You also make other comparisons, I understand. On a general efficiency basis, how do you compare on such things as lost baggage and so on—the complaints division? Do you lose more? It is sometimes said that air transportation is a marvellous thing: you can have breakfast in New York; you can have lunch in London; and you can have dinner in Cairo—and your baggage is in Vancouver!

Mr. Cochrane: Well, we have had some unusual problems over the last year, as you all well know. But to answer your first question, "Do we make these comparisons?"—yes, and we make these comparisons continually. At this point in time we are comparing reasonably well with the United States airlines, which is where we make our major comparisons. We have one difference, compared with the U.S. airlines, which is quite important, and that is that our load factors are substantially higher than theirs. For every plane we fly we have 10 per cent more people on it than they have on theirs. So this, of course, increases the chances for mishandling of baggage on a per-passenger basis, because your planes are more crowded and so on.

But, as I say, our performance, say, last year was not that good compared with the U.S. airlines. It is now improving substantially. We have standards set for baggage handling and other things which are based on the standards in the U.S. airlines and based on the performance in the U.S. airlines, and in some cases we are achieving those, but in all cases we are getting closer and closer to achieving them. In other words, we have not been good, but there is progress.

Senator Grosart: Is your problem in the area of the telephone answering service any greater than that indicated in other airlines?

Mr. Taylor: I think our standards are better than most of the major U.S. carriers, in terms of what we hope to attain, certainly in 1973, and we are closer to attaining them as we move into 1974 than the U.S. carriers are.

Senator Grosart: Is there any truth in the oft repeated canard that Air Canada is the greatest airline in the world in the air and the worst on the ground? You must have heard that many times. I am not saying it is so.

Mr. Taylor: I would like to say no, senator, but I think it is a valid criticism of all airlines, because once a passenger gets in an aeroplane and is on his way to a destination he is much less critical of what is happening to him than he is when he is on the ground waiting to get on to the aeroplane. So I think it is a valid criticism of all airlines.

Senator Langlois: My first question deals with security checks done at the airport prior to boarding. Are all these checks imposed on Air Canada by the airport authority, or at some other level in the Ministry of Transport? My question is: Are they imposed? Do you have to be subjected to these checks?

Mr. Taylor: Let me try to answer it this way, senator: The general question of security of passengers within airport terminals is one in which the Ministry of Transport is very much involved in terms of setting the standards or the level of security. In terms of the cost of that security within the airport, this is borne by the airlines, and is usually provided, I think, in most terminals now, by service agencies in which all carriers participate. At one time it was carried out individually by airlines. In fact, the airlines very much encourage the need for security, and it is not something that we resist. We wish we did not have to do it. We wish the whole question of security environment were such that we did not have to do security checks; but we feel it is in the interests of the passenger and the air carrier to carry out security checks.

Senator Langlois: Your answer prompts another question in my mind on the same subject. If these checks are done for the security of the passenger, and the cost is charged to your company, how is it—and I do not want you to

explain MOT policy—that some of your competitors at Dorval, for example, do not carry out any security checks?

Mr. Taylor: Well, I assume, senator, that you are referring to a recent case involving one of the international airlines operating at Dorval.

Senator Langlois: Iberia, two weeks ago, on the flight from Montreal to Madrid. No security checks were carried out.

Mr. Taylor: There are some individual situations like this that I am not able to explain, not because I do not want to explain them, but I know that there are one or two instances like this that have not been properly explained to the public.

Senator Langlois: Coming back to this question of stop-over or lay-over charges, I would like you to tell me what is the justification for these charges, and particularly the justification for the large variations between the stop-over charges at different airports. For example, this afternoon one of my colleagues here mentioned that there was a lay-over charge at Halifax of $17, and another one mentioned a charge at Winnipeg of $25. Why this variation?

Mr. Taylor: I am glad you asked the question, because it gives me a chance to correct something that I may have misled Senator Cameron on, which I am now able to clarify and which I had planned to clarify before we closed. That is that the stop-over charge, as I referred to it and which we commonly refer to as a stop-over charge, is the increase in fare that results when a journey is broken. The basis for the tariff in that case, under the current tariff, not only in Canada but throughout North America, as I understand it, is the combination of the sector fares, so that the $25 figure that Senator Cameron used may very well have been the right figure, depending on the route that he was travelling at that particular time.

You ask for the basis of this. Well, the basis of it is the fact that it is the same to the airline as two separate journeys, because if you come as a passenger from Vancouver to Toronto one day you are a Vancouver-Toronto passenger that day, and if you come from Toronto to Halifax, or Fredericton, or Saint John the next day you are in fact a second journey passenger. The basis of tariff pricing in Canada, as it is pretty well generally throughout North America, is that you attempt to recover your ground cost as well as your air cost, and when you break a journey you in fact become two passengers.

The Deputy Chairman: Would the CNR do the same thing? Supposing you are in Montreal, you go to Vancouver and—

Senator Langlois: We still have some CNR witnesses here.

The Deputy Chairman: Well, I am just asking it in that way. Did you hear my question, Mr. Cooper?

Mr. G. M. Cooper, General Counsel, Canadian National Railways: I heard your question, Mr. Chairman, but I am afraid I do not know the answer.

The Deputy Chairman: Well, could you let us know later?

Mr. Cooper: Yes, I will, senator.

The Deputy Chairman: I am sorry, Senator Langlois.

Mr. Taylor: Could I just continue to deal with the principle of tariff making, if you want to call it that? The through fare applies from Vancouver to Halifax when the passenger does not break his journey and goes straight through. When the journey is broken, he becomes, in fact, two passengers, or three or four, as the case may be, depending on the number of times he breaks his journey, and then, the sum of the sectors applies and this is the basis of the tariff.

Senator Langlois: If I understand your answer correctly, this lay-over charge is meant to cover the additional ground cost to your company if one passenger breaks his journey at one particular airport instead of going right through. But then the variation in the charge indicates to me that these charges are not based at all on your own ground cost, because your ground costs vary. I assume that the difference between the ground cost at Halifax and the ground cost at Winnipeg is not that big that the lay-over charge at Winnipeg would be about double that at Halifax.

Mr. Taylor: Well, senator, there is one constant and one variable. The constant is the ground cost and the variable is the flying cost; that is to say that the flying cost to fly over a short distance is higher per mile than the cost to fly over a long distance because you get the economies of the aircraft once you put it in the air at Toronto at 20,000 feet and fly it 2,000 miles as opposed to flying over a short distance. The other variable is the length of the leg, as we call it, because the length of the leg that the passenger is travelling creates the variation in the so-called stop-over charge which is in fact the sum of the sectors.

Senator McElman: I have a supplementary question before that point is finished with, Mr. Chairman.

For a number of years on overseas flights a passenger—and I do not know if this still applies or not—who proceeded in a forward direction towards his final destination could take side trips to various points without any increase in fare and without any stop-over charges. Does this still apply?

Mr. Taylor: I know that that has been withdrawn in the majority of cases. I stand to be corrected on that, and I shall verify it for you to determine if it has been withdrawn in all cases. I can recall advertisements at one time which said something to the effect of, "six cities in Europe for the price of one", but I know that the general increase in the cost of operating an airline has caused the industry generally to withdraw from that practice, and I think in most cases they have done so.

Senator McElman: Was it ever the case in Canada with your carriers that you could follow such a procedure on fares?

Mr. Taylor: It was the case some years ago, senator, when there was no stop-over charge at all, and then it went to where there was a fixed amount, either $5 or $10, or, in fact, it may have gone from $5 to $10. Then, eventually, it became the sum of the sectors. The airlines did this as they faced higher costs for fuel, labour and supplies. They had alternatives. One was to increase the whole general level of fares, or to apply some of these other techniques of the sum of the sectors; and, in fact, some of both was done, to the point where it is now totally the sum of the sectors as opposed to a flat charge.

Senator McElman: So there is no difference today within Canada with your carrier if a person schedules in advance for stop-overs or if he arrives at point X and suddenly

decides he will not proceed to his destination and just discontinues his flight?

Mr. Taylor: No, if you schedule a stop-over, that is, if you schedule to fly from Fredericton to Toronto one day, and two days later you decide to fly from Toronto to Winnipeg, and two days later to fly from Winnipeg to Vancouver, your tariff is for the sum of the sectors.

Senator McElman: So there is no penalty to a person who leaves you with an empty seat?

Mr. Taylor: No. This gets back to the other question, where airlines find it very difficult to find a way of imposing a penalty for empty seats.

Senator Langlois: Are the stop-over charges the same in Canada as they are in Europe? Do they make a stop-over charge in France and Germany on the same basis as you do here?

Mr. Taylor: My understanding from recollection is that in the United States and Europe they were using both stages that we ran through earlier—the flat stop-over charge before we were, and the sum of the sectors before we were.

In Europe the per-mile cost of flying is considerably higher than ours, 25 or 40 per cent higher. It is a general tariff rule adopted by most airlines.

Senator Langlois: Is it not a fact that some of your competitors in Europe do not have stop-over charges?

Mr. Taylor: I would need to check that, senator.

Senator Langlois: I was informed by my colleague on my right that he recently saw an advertisement by Lufthansa to the effect that you could go all over Germany and stop over at any place you wish without a stop-over charge.

Mr. Taylor: I think it is without question that the cost of air travel in Europe is considerably higher than it is in North America. What this particular reference to Lufthansa is, I do not know. I would like to check that.

Senator Smith: There was a full-page ad in the Montreal *Star* not so very long ago, and I reminded the senator about that. They may charge you a total sum of money to be able to do this. They do not break it down, so I would not know what the charges are, or if they are included.

Mr. Taylor: That is possible. They may be selling you a package in which all of these things are included. That is quite legitimate.

Senator Langlois: My next question has to do with that which was put to you earlier by Senator Grosart, in regard to short-term financing. He related that to the fact that the bill before us was delayed for so long. He asked you if there was a difference in cost for having been obliged to obtain financing under short-term, as compared to the expense if you could have had the benefit of long-term financing.

Is it not a fact that the financing that you did in England through Lazard Frères to cover the purchase of the Rolls Royce engines and components was done at very favourable interest rates, even though it was shorter term financing?

Mr. Taylor: That is correct. It was done at extremely favourable interest rates. But, of course, that was a special arrangement which is encouraged by the British government, because it involves the export of their engines. We are also doing financing at very good with the EXIM Bank in the United States, which involves the export of their aeroplanes.

Senator Langlois: If this act had been passed, and you would have been able to purchase on a long-term basis, it would have cost you more money?

Mr. Taylor: No. If the act had been passed we would not have used the money to finance the engines. We would have financed the engines with Lazard Frères anyway, because it is cheaper.

Senator Langlois: Over the same period of time?

Mr. Taylor: Yes, because it was a better economic arrangement from an interest rate standpoint than we would have got had we borrowed the money from the government.

Our general policy is that wherever we can we will try to get money from non-government sources provided it is more economic. In those two instances it was more economic.

Senator Langlois: I was under the impression that Lazard Frères was coming to the rescue of Rolls Royce rather than to the rescue of Air Canada.

Mr. Taylor: But in the end they helped us.

Senator Langlois: But my assumption was right.

Mr. Taylor: Yes.

Senator Langlois: Going back to the first page of the balance sheet, you show an item "Investment in Other Companies at Cost". I think you have already mentioned one of those companies. Could you give us the names of the other companies and what the investments are?

Mr. Cochrane: The investment in other companies at cost solely reflects our investment in Air Jamaica. There are no other investments reflected there, senator.

Senator Langlois: I have one final question, Mr. Chairman.

Coming back to page 2 of the "Notes to Financial Statements," the last line of note 3 reads as follows:

> Lease obligations, excluding the portion related to interest, have been included with long-term debt.

Am I to understand that this interest is charged to your operating expenses in this instance?

Mr. Cochrane: That is right, senator.

Senator Desruisseaux: One or two of the questions I had in mind have already been answered. There are two or three points I should like to cover. I should like to start by saying that Air Canada, in spite of the faults that we might find now and then, is, in my view, as a layman, one of the best airline companies operating in the world today. As far as I am concerned, the same applies to the management. I say that because of the interpretation given to some of my remarks in the Senate when I spoke on Bill C-5.

I should like to know, Mr. Taylor, whether Air Canada has any subsidiary companies.

Mr. Taylor: The only wholly-owned subsidiary that could be classified as a subsidiary in the legal sense is a com-

pany called Air Transit Limited, which is a company being set up under section 18 of the Air Canada Act to operate under contract. It has no assets; it will operate, under contract, the STOL service between Ottawa and Montreal. It is now in the process of being set up. It is strictly a company set up to operate under contract.

The Air Canada Act provides that Air Canada can own subsidiaries in the airline business, so there is a limit in the Air Canada Act to that extent. There are other companies that have been set up and are being used by Air Canada through the vehicle of the CNR to wholesale charters. There are one or two small companies for that purpose, but, essentially, that is the only subsidiary. We do have this investment referred to earlier in Air Jamaica, but it is a minority investment. The Jamaican government, over a 10-year period, is acquiring that investment.

Senator Desruisseaux: Are the revenue, if there is any, or deficits from these companies taken into account in this statement before us, or do they go through the CNR?

Mr. Taylor: In the case of Air Jamaica, it is not included because it is a minority investment. Only the investment is shown. In the case of Air Transit, that company is only coming into being in 1974. I do not believe there is anything in the consolidated statement for 1973.

I will ask Mr. Cochrane to comment on the others.

Mr. Cochrane: Revenues from the charter business which we operate with the CNR are not included in any way in our statement.

Senator Desruisseaux: Some years ago there was some talk of the possibility of transferring the maintenance from Montreal to Winnipeg. I believe there was a report published to that effect. Is that report available presently?

Mr. Taylor: I would presume, senator, you are referring to the so-called Thompson Commission inquiry.

Senator Desruisseaux: Yes.

Mr. Taylor: I guess that was three or four years ago, perhaps even longer ago than that. If my memory serves me aright, it is slightly longer ago. It is in that time frame anyway. This was a public inquiry. I believe certain findings of that inquiry were made public, but I do not think the report of the commission was ever made public - although I stand to be corrected on that.

Senator Desruisseaux: Do you recall whether in that report the recommendation was to move to Winnipeg?

Mr. Taylor: The report validated, if you will, management's decision that the most efficient and economical way to maintain Air Canada's fleet was to do so on the basis of the maintenance bases, of which there are more than one, which currently exist, which are the main overhaul base in Montreal, with line maintenance being done in Halifax, Toronto, Winnipeg and Vancouver. The report validated those conclusions.

Senator Langlois: It recommended the status quo, in effect.

Senator Desruisseaux: In the published news there was a rumour that it was being moved, and would be moved back to Winnipeg under pressure.

Mr. Taylor: There have been published reports that have to do with the fact that Air Canada is acquiring Boeing 727 aircraft this fall. There have been reports that the maintenance of these aircraft might take place in Winnipeg. All I can say at the moment is that as of today the corporation is planning to maintain these aeroplanes at the maintenance bases it currently has.

Sénateur Asselin: J'aurais une question à poser, à savoir si on déménage de Montréal à Winnipeg, est-ce que vous anticipez des mises à pied à Montréal?

Le président intérimaire: Je regrette, sénateur Asselin, mais nous n'avons pas installé le service d'interprétation simultanée.

Sénateur Asselin: Eh bien, je pense qu'on devrait l'avoir dans tous les comités, car cela s'applique à tous les comités de la Chambre des communes et du Sénat.

Le président intérimaire: Vous avez raison de vous objecter qu'on ait pas ce service ici, mais je ne sais pas pourquoi. Je ne crois pas que ce soit au président du comité à voir à ce que ces facilités soient installées.

Sénateur Asselin: Non, mais je constate un fait tout simplement.

Le président intérimaire: J'espère que cela ne se reproduira pas et qu'à l'avenir nous aurons le service d'interprétation simultanée, et que nous devons l'avoir.

Senator Langlois: Mr. Chairman, Room 356-S has the equipment. Why was it not used this afternoon?

The Deputy Chairman: I do not know. This is the room that was given to us. I thought we would have all the facilities here. Unfortunately, as Senator Asselin has just mentioned, and as we all realize, we have not the translation system. I regret that, as your chairman.

Senator Asselin: I will put my question in English; I do not mind. In moving maintenance from Montreal to Winnipeg, do you anticipate any layoffs of your employees in Montreal?

Mr. Taylor: You are making an assumption that we are going to transfer some maintenance.

Senator Asselin: If it happens.

Mr. Taylor: I think the only position I can take at this point in time is that the corporation has no plans at the moment to carry out its maintenance other than where it is currently carrying it out. It would be difficult for me to answer your question as to whether there would be layoffs in Montreal, because we are not anticipating that the maintenance program will be any different than that which currently exists.

Senator Desruisseaux: The company has a total responsibility to choose in the cases where they are offering?

Mr. Taylor: the corporation management believes it has the responsibility to make the decision.

Senator Desruisseaux: Unless there are other supplementary questions, I will pass on to another one which is very short.

Senator Benidickson: My supplementary would be on that point. Some years ago Winnipeg was an important location for Air Canada maintenance. Some of that was moved to Montreal. Am I right in thinking that, after protests, certain commitments were made that a certain

amount of Air Canada maintenance would continue in Winnipeg? In particular, that would apply to the maintenance of Viscount aircraft. I think I have read that they are being phased out. Was there an agreement entered into at any time, or a commitment made at any time, that a certain volume of repairs for Air Canada would continue in Winnipeg? And, if there was such a commitment, was that commitment fully discharged?

Senator Langlois: You are referring to a commitment by Air Canada?

Mr. Taylor: I will answer part of the question, and I will ask Mr. Cochrane to deal with the remainder.

Senator Benidickson: I do not know whether it is Air Canada or the owners of Air Canada, the Government of Canada.

Mr. Taylor: There is an item on the balance sheet which indicates there is a commitment. Going back in the history of that commitment, Air Canada did move its major air overhaul base to Montreal, and this was over a period of time. In the process of doing that, and related somewhat to the inquiry that was referring to earlier, there was a commitment.

Senator Benidickson: I am hazy about this, but I wish you would tell me about it.

Mr. Taylor: There was a commitment when that major overhaul was in the process of being changed. It was a three-way commitment, between Air Canada, CAE and the federal government. Air Canada's portion of that commitment was that for a period of five years it would provide 100,000 hours a year of work for CAE in Winnipeg to help CAE get on its feet in the aircraft maintenance and component business. That commitment has two years to run, and Air Canada has met its commitment up to this point and intends to meet it. That will be done through a number of ways. The Viscount was one them. Then there is galley equipment and other work that can be part of it.

Senator Forsey: May I ask a supplementary? That is the item we had an inquiry about a little while ago, and which they negotiated about?

Mr. Taylor: That is exactly the item.

Senator Desruisseaux: The total investment now to the taxpayers of Canada, let us say, would be what? If you have it in that form, I want to follow that one.

Mr. Cochrane: That is a hard question to answer, in that the investment itself in the company is made by CNR and they own all the shares of the corporation. The amount they have invested is $5 million, as shown on the balance sheet. That is the equity investment.

In addition to that, Air Canada has borrowed money from the government is order to operate, and has borrowed money from the CNR in order to operate. Air Canada has borrowed from the government approximately $230 million. So we owe that money to the government and we pay interest on that money.

Senator Desruisseaux: But that is included in the long-term debt?

Mr. Cochrane: Yes, sir, that is part of the long-term debt.

Senator Desruisseaux: So you have it down here as $690 million—

Mr. Cochrone: Just a moment, sir. Let me check. I may have given you the wrong figure. Part of the money is owed to the CNR, part of it to the government, and part to other sources. If you will just give me a moment, I think we can come up with it.

Senator Desruisseaux: All right.

Mr. Cochrane: You were quite right, sir. The number is closer to $600 million than it is to the $230 million I gave you. I apologize. What I am looking for now, Mr. Chairman, is the breakdown between the CNR and what we owe to the government. I will explain that later, if I may. I suppose it is not really that important on the basis thatthe CNR is associated with the government anyway.

Senator Desruisseaux: I would like to know what is really our total investment for the taxpayers, directly or indirectly.

Mr. Cochrane: Sir, I will give you that number.

The Deputy Chairman: Are you through wtth your questions, Senator Desruisseaux?

Senator Desruisseaux: Yes.

Senator Riley: Mr. Chairman, I have a number of questions to ask. I realize the hour is getting late and that the witnesses must be pretty tired by now, but I would like to revert to the line of questioning started by Senator Grosart in respect to the mishandling of baggage by Air Canada. I would like to know when and why the system of baggage checks was changed from the corded check attached to the handle by a piece of string, to this piece of paper which is looped around the handle and fastened at the end by adhesive. Is there any reason at all why this was done?

Mr. Taylor: Yes, senator, there was a reason for this being done. It is still being evaluated. I believe the experts feel that it was a good change, and I will try to explain the reason for it.

As terminals got larger and as it was necessary to provide belts and channels for bags to go on, where they did not just go through a chute and on to a cart, the tags with the strings on them had a tendency to get caught up in the belting system and to get torn off, because they hung much looser from the bag and as the bag flopped over on the belt and went through the tag would get caught on the belt. The carriers found that a lot of these tags were getting torn off in the belting system. That is why the design of the adhesive tag, as they refer to it, was conceived. It was so that the tag would stay much closer to the handle of the bag and would not be so subject to being torn off in the channels of belting and sorting machinery.

That was the reason for it. I suspect that one could say the "jury" is still out on whether it is an improvement. The indications are that it is an improvement.

Senator Riley: One senator—I believe it was Senator Graham—raised the question about baggage being left out in the wet. What happens to these tags when baggage is left out in the wet because of the delay in aircraft being loaded? Moreover, what happens when somebody puts a little nick in this tag? And what happens when the adhesive gets softened as a result of warmth? I have tested these tags myself. I have seen these loops half torn off when the baggage comes off the aircraft.

Recently, not by request, I had a corded tag put on my bag, and I asked why the tag was being put on in this instance. It was the string tag. I was told that the tag is put on if there is going to be a change of aircraft during the trip. Why is it that both systems are being used?

Mr. Taylor: Well, both systems are in use at the moment because what we call interlocking tags, or tags which have connecting flights on them, have to be a larger tag with a separate voucher, if you will, and this is a problem, I guess, of the design of the baggage tags. Probably the people who specialize in this have not been able to come up with a gum tag that would provide the additional voucher, as it were, for the connecting portion of the flight, so both systems are still in use. As I say, there is somewhat of a controversy because you gain some and you lose some. With the adhesive tags you gain the advantage that the tag does not hang loose and therefore is not subject to getting caught in the mechanism. On the other hand, you have certain risks with the adhesive one in that the adhesive, under wet weather conditions or certain other conditions, comes loose, and it is a question then of which system has the least risk built into it.

Senator Riley: On the inter-line baggage, that is, baggage being transferred from one aircraft to another, is this tag system with the string always used?

Mr. Taylor: If there are two flight numbers involved, I believe I am right in saying that the larger tag is used. Again, I stand to be corrected but I believe I am right, in that when there are two flight numbers involved, and two flight numbers have to go on the tag, then the larger tag is used.

Senator Riley: I am referring to my own experience, checking a bag in Ottawa and having the paper looped over the handle. There was a change of aircraft in Montreal, and the paper tag was used and yet there was the inter-lining, and I have never seen the bag since.

Mr. Taylor: I was trying to ask: Is this the bag that was lost? That is probably the reason. I do not want to be facetious, but it may very well be the reason the bag was lost.

Senator Riley: Yes. And I have asked, if somebody, in transferring the baggage, gets his finder caught in it, or the loop gets caught in something else—it is a very soft paper, and easily torn, despite the assurances you get from the ground personnel—

Mr. Taylor: As I say, there are risks in both of them, and I suspect the "jury" may still be out on which is the better system, in the long run; but I know the reason for going to the other one was as I have stated.

Senator Riley: Well, why do you not have the same technical difficulties in respect to the tags with the strings on getting caught up in—what do they call it?—the machinery of passing the bags from the counter out to the aircraft? Why does that same problem not exist now? And, if it does not exist now, why not revert to these tags?

Mr. Taylor: Well it is a very good question, senator, and it is one that I will pursue. I know that both systems are in force. The whole question of baggage is one that concerns all of us—not just Air Canada, but the whole industry—because as passenger volumes have increased out, with these long lines of belting, and containers have been used, the problem becomes more complex. If a container gets left behind, we do not lose just one bag now, but thirty. We have become very efficient at losing bags now, on occasion. It is a problem we are devoting a great deal of energy to. I do a lot of travelling personally, and I have a lot of very real personal experiences that I can feed in to our people.

Senator McElman: I suggest that we should put Senator Riley in the baggage container, and his bag in the seat.

Senator Riley: That would be particularly appreciated by me, if you were flying in the same plane.

If I may continue. If this is the case, and you have very kindly supplied me with some honest figures, I am sure, in respect to mishandled baggage, has any analysis been made as to how many of those mishandled bags have been mishandled as a result of a loss of that looped paper tag?

Mr. Taylor: Yes, senator, I can confirm to you that I do not know of any subject outside of certain safety issues on our aircraft that has been more subject to thorough analysis and research in the last couple of years or so than baggage mishandling. As to why baggage gets mishandled, it gets tagged incorrectly, it is taken on the wrong cart, tags get torn off. We have even put trays under various belts to determine what kind of rollers tear off the most tags. There has been a tremendous amount of research and analysis into this question. Not only have we considered the kind of tag and the size of tag but also all the things that can happen to a piece of baggage. It is left on the ramp or it is put on the wrong cart or the agent tags it incorrectly—there are many, many reasons. If you would like to take the time with me, I would be glad to go through one of these analysis reports with you.

Senator Riley: Then just one other question. You mentioned the powers conferred on the company under the Air Canada Act by which you are restricted to the operations of airlines, I believe.

Mr. Taylor: That is right.

Senator Riley: Bearing in mind the fact that legislation can be amended and powers can be extended, has Air Canada ever contemplated going into the aircraft construction industry?

Mr. Taylor: There was a proposition that was discussed in the committee of the other house, senator, last fall concerning a working paper which Air Canada had jointly prepared with some other interests relative to the aircraft industry in Canada.

Senator Benidickson: Can you name those other interests?

Mr. Taylor: The principal one was Comstock.

Senator Benidickson: Had it anything to do with de Havilland?

Mr. Taylor: It involved both de Havilland and Canadair, but that was not a proposition discussed other than in this particular working paper, and that is the only instance.

Senator Riley: I apologize to you because I was not fortunate enough to be summoned to the Senate before this was discussed in the other place.

Senator Langlois: Before we leave this point, and I do not expect the witness to have this figure at his fingertips, but could he give us a rough estimate of the annual loss sustained from damage to or loss of baggage?

Mr. Taylor: In fact, we can give you the figure.

Mr. Cochrane: It was approximately $3 million.

The Deputy Chairman: Per year?

Mr. Cochrane: That was in 1973.

Senator McElman: 1973 was an extraordinary year.

Mr. Cochrane: Very extraordinary.

Senator Benidickson: I think Senator Riley was just about to lead up to something that has aroused my interest—and that is a mild term—and has quite alarmed me. In the *Financial Post* of the current week there is a front-page article by Mr. Clive Baxter, who is the senior reporter from Ottawa, and I should like to quote a few words from the article. It says:

> The government seems on the verge of nationalizing de Havilland Aircraft of Canada Ltd.

Here I want to be fair by eliminating a few words because this goes on to refer to last year—and this is perhaps what Senator Riley was referring to and perhaps what you were referring to in your reply to his quesiton. It goes on to say:

> Last year Ottawa had a firm offer to buy from Air Canada and Canadian International Comstock Co., which jointly prepared to buy and merge together de Havilland in Toronto and Canadair Ltd. in Montreal.

I am concerned about whether or not an operating company is carrying on any activity, or anybody in its employ, or that we are voting money for salaries for the purpose of getting into manufacturing, and placing the company in a position that it was not able to buy in the most competitive markets but would have an arrangement at the manufacturing end of the business and might be biased in favour of a particular type of aircraft in its operations.

Mr. Taylor: The only thing I can say in answer to your question, senator, is that, other than the reference which I gave Senator Riley, there is no active involvement by this corporation in a similar proposal at this time.

Mr. Cochrane: I can assure you, from a financial standpoint, that no money is being spent at all in this direction.

Senator Benidickson: Perhaps it is not being spent, is the time of some salaried people being devoted to the exploration of the kind of thing that Mr. Baxter was writing about last week?

Mr. Cochrane: No, not at this point in time; with the exception of the one reference which Mr. Taylor made—

Senator Benidickson: Of about a year ago.

Mr. Cochrane: —of about a year ago. To the best of my knowledge—which is pretty good—we have no people looking at that deal with an aircraft company or at a similar deal with an aircraft company such as you mention.

The Deputy Chairman: Are there any further questions?

Senator Cameron: On the matter of baggage, the new stickers are a great improvement. I want to say that I have found Air Canada very good at replacing damaged baggage.

I should like to compliment Mr. Taylor and Mr. Cochrane on the way they have handled the questions this afternoon. It has been a long session, and they have discharged their responsibility with credit both to themselves and the organization they represent.

Hon. Senators: Hear, hear.

Senator Desruisseaux: Mr. Chairman, I hesitated to put the question, but I shall do so. When aircraft are sold after having rendered service to Air Canada, how is the disposal arranged? Is it done by tender?

Mr. Cochrane: It is done by tender, when we can get tenders. Many of the aircraft we have finished with are very difficult to sell, and we have at least one man who spends part of his time actively going to people, trying to convince them that our aircraft, as run down as it might be, is better than the aircraft being disposed of by other airlines. We are in the position of selling the aircraft and we are actively trying to sell.

Senator Riley: But you do not advertise the tenders?

Mr. Cochrane: No. Perhaps I could make two corrections.

The government has invested directly or indirectly $636,-603,000 in Air Canada. We pay interest on all of that, with the exception of $5 million which is the equity, on which we pay the CNR a dividend.

Unfortunately, I gave you, with regard to lost baggage, a figure, that included also inconvenience to passengers, of approximately $3 million. That concerned the people who were inconvenienced, and we put them in hotels, bought them meals, and so forth. As I say, that was approximately $3 million for last year. The figure in respect of lost baggage, misplaced baggage and repaired baggage is $1,300,000.

Senator Desruisseaux: There is no insurance on that?

Mr. Cochrane: It is self-insured. We have looked into the possibility of getting insurance to cover it, but the insurance costs would be more than we paid.

The Deputy Chairman: On behalf of all honourable senators, I should like to thank you for your assistance and the manner in which you have answered our questions this afternoon. You have provided us with a great deal of useful information.

I would ask members of the committee to remain after the witnesses leave as there is a recommendation which we want to discuss.

The witnesses withdrew.

The Deputy Chairman: Honourable senators will recall that there was a suggestion put forward by Senator Grosart this morning regarding this type of legislation. I understand Senator McElman has prepared something in connection with that suggestion, and I would now ask him to read it.

Senator McElman: Mr. Chairman, before doing so, there is one brief comment I should like to make on this matter of Air Canada being in the manufacturing end of the business. I think this committee should stay on top of that matter. We saw an instance recently where a manufacturer in the United States was not only reluctant but almost, according to the United States record, refused to make repairs to an aircraft, and the dreadful disaster in Paris was the result. That surely points up the conflict which comes to bear when you have a situation where the carrier

is involved in the manufacture as well. I thought I should make that comment.

The Deputy Chairman: Thank you, senator. Before you go on to the recommendation, we should have a motion as to whether or not the bill should be reported without amendment.

Senator McElman: I so move.

The Deputy Chairman: Is it agreed, honourable senators?

Hon. Senators: Agreed.

Senator McElman: Mr. Chairman, in view of the discussion that was held this morning with the various witnesses, it was felt that there should be an addition to our report. I have drafted that recommendation, and it is as follows:

> The Committee is convinced that the C.N.R. Financing and Guarantee Act should be re-structured as indicated by the evidence before the Committee in order to correct certain inherent anomalies and particularly to present the authorization required in a form that will be more realistic and up-dated in order to facilitate its consideration by Parliament early in the current year for which the authorizations are sought;
>
> Therefore, the Committee recommends that the Senate authorize this Committee to undertake to devise ways and means whereby the purposes of the legislation now before the Committee may be achieved in a more expeditious and satisfactory manner in future.

The Deputy Chairman: Are there any comments on the recommendation?

Senator Riley: If you repeat the first part in English it will be all right.

The Deputy Chairman: I think it is quite in order that I add that to our report.

Senator Langlois: If I might speak to the Law Clerk through you, Mr. Chairman. Does this committee need such an authorization to go into this?

Mr. Hopkins: No, it does not need it.

Senator Langlois: I do not think so.

The Deputy Chairman: An authorization to do what?

Senator Langlois: To make this study. I do not think we need to be authorized by the Senate to do that.

The Deputy Chairman: That I do not know.

Mr. Hopkins: I beg your pardon, I did not properly understand your question. There are only two committees of the Senate that have any inherent power to undertake investigations. One of them is the Standing Senate Committee on Internal Economy, Budgets and Administration, which is granted that sessionally; the other is the Standing Senate Committee on Standing Rules and Orders, which has inherent power by reason of the rules. Other committees cannot do anything other than what is specifically referred to them.

Senator McElman: That is my understanding.

Senator Langlois: I just wanted to check on it.

The Deputy Chairman: It is a good question.

Senator Fournier (Madawaska-Restigouche): Is that a recommendation?

Mr. Hopkins: It is just a recommendation.

Senator Langlois: If this report is adopted, we are bound to make the study then?

Mr. Hopkins: No. There would have to be a new motion in the Senate.

Senator Forsey: You would have to have a fresh motion in the Senate. This is merely a recommendation.

Mr. Hopkins: This is merely a recommendation to the Senate. The Senate will act or not act, as the Senate sees fit.

The Deputy Chairman: Even if the Senate accepts that recommendation?

Mr. Hopkins: It just accepts the entertainment of the recommendation.

The Deputy Chairman: Then another motion is necessary.

Mr. Hopkins: It is necessary.

Senator Riley: This is just a recommendation.

Mr. Hopkins: Yes.

The Deputy Chairman: We have to make it so that later on—exactly when I do not know—we could have a discussion with the members of the Opposition.

Mr. Hopkins: It is entirely up to the committee, what they wish to do.

The Deputy Chairman: We could introduce a motion at any time and say we are now ready to study the particular question or follow through with the recommendation. Would that be our right? Is that legal?

Senator Langlois: This is tantamount to a pious wish on our part.

The Deputy Chairman: Exactly.

Mr. Hopkins: Perhaps I could make this observation. The only thing is that there was a certain amount of discussion this morning indicating a consensus that there should be a recommendation. The question is whether, now that the primary actors may not all be here, we should depart from that. That is up to the committee now.

The Deputy Chairman: Maybe we should take some further steps to find out.

Senator Langlois: When we make a formal motion in the future we would like to consider the suggestion made by the president this morning, when he suggested that the CNR Act should be amended. He made that suggestion again this morning.

Mr. Hopkins: I do not want to suggest the policy of the committee. I am trying to be careful not to. It is up to the committee. There was a certain understanding this morning in the presence, particularly, of some members of the Opposition. It is now entirely up to the committee.

The Deputy Chairman: Let us settle this point for tonight. We can legally add this to our report?

Mr. Hopkins: Yes, without committing the Senate.

The Deputy Chairman: Without committing the Senate. If we want to do something more, we will have to have another motion.

Mr. Hopkins: Right.

The Deputy Chairman: So, before putting another motion I think some members of the committee, if not all the committee, should look into it and find out exactly what kind of motion we will have.

Senator Riley: It is a reflection of the thinking of the committee in respect of this sort of procedure.

The Deputy Chairman: Yes.

Senator Riley: It indicates to the Senate that this was discussed by the committee, that these are our views, and that this is the recommendation of the committee.

Mr. Hopkins: That is right.

Senator Langlois: We are not amending the bill.

The Deputy Chairman: The bill is passed. We report the bill without amendment. Our report is not debatable but when the Speaker asks, "When shall this bill be read the third time?" anyone may speak.

Mr. Hopkins: That has happened several times.

The committee adjourned.

APPENDIX "A"

CANADIAN NATIONAL TRANSPORTATION, LIMITED
BALANCE SHEET AS AT 31 DECEMBER 1973

ASSETS			LIABILITIES		
Current			Current		
Cash	$ 7,061.78		Accounts Payable	$ 1,120,250.96	
Accounts Receivable	1,113,025.00		Due to C.N.R.	6,750,213.42	
Prepayments	115,629.53				$ 7,870,464.38
		$ 1,235,716.31	Advance from C.N.R.		13,549,609.12
			Shareholders Equity		
			Capital Stock		
			Authorized:		
			1,500,000 Sharesof no Par Value		
Fixed					
Equipment	$ 13,269,830.78				
			Issued:		
Less: Recorded Depreciation	4,866,200.98				
		8,403,629.80	50 Shares of no Par Value	500.00	
Investment in Subsidiary Companies		15,686,165.10	Retained Earnings	3,904,937.81	
					3,905,437.81
		$ 25,325,511.31			$ 25,325,511.31

CANADIAN NATIONAL TRANSPORTATION, LIMITED

Income Statement
Period Ending 31 December 1973

Income		$ 10,723,428.93
Expenses		
Equipment Maintenance	$ 2,220,031.35	
Depreciation	937,540.00	
Transportation	5,736,135.91	
Taxes	508,797.09	
Interest Expense	359,224.60	
Administration	300,889.24	
		$ 10,062,618.19
		660,810.74
Provision for Income Tax		4,377.80
Net Earnings for the Year		$ 656,432.94

Statement of Retained Earnings
for the Year Ended 31 December 1973

Balance at 31 December 1962	$ 3,248,504.87
NET Earnings for the year 1973	656,432.94
BALANCE at 31 DECEMBER 1973	$ 3,904,937.81

APPENDIX "B"

CANADIAN NATIONAL RAILWAYS
INTERIM FINANCIAL STATEMENTS—1973

CONSOLIDATED BALANCE SHEET AS AT DECEMBER 31

ASSETS

	1973	1972
Current Assets		
Cash	$ 6,444,078	$ 10,708,410
Accounts receivable	205,694,025	162,397,820
Material and supplies	93,328,399	82,545,126
Other current assets	84,076,877	48,007,777
	389,543,379	303,659,133
Insurance Fund	11,077,967	9,801,692
Investments in Affiliated Companies not Consolidated		
Air Canada	382,819,500	382,819,500
Jointly operated companies	56,270,275	51,867,272
	439,089,775	434,686,772
Property Investment		
Road	3,223,278,458	3,121,201,057
Equipment	1,563,177,818	1,574,127,256
Other physical properties	189,064,954	174,075,997
	4,975,521,239	4,869,404,310
Less recorded depreciation	1,452,921,933	1,392,612,350
	3,522,599,297	3,476,791,960
Other Assets and Deferred Charges		
Other investments	5,836,559	5,807,283
Prepayments	2,332,011	3,950,762
Unamortized discount on long term debt	6,801,314	7,812,540
Other assets	2,341,852	2,509,139
Deferred charges	29,565,434	25,549,505
	46,877,170	45,629,229
	$ 4,409,187,588	$ 4,270,568,786

LIABILITIES

	1973	1972
Current Liabilities		
Bank loans	$ 106,000,000	$ 49,000,000
Accounts payable	185,933,358	139,975,031
Accrued charges	84,266,184	69,888,135
Other current liabilities	32,017,726	22,610,005
	408,217,268	281,473,171
Provision for Insurance	11,077,967	9,801,692
Other Liabilities and Deferred Credits	67,611,003	57,399,730
Long Term Debt		
Bonds	805,498,264	811,555,764
Government of Canada loans	1,088,897,514	1,082,452,857
	1,894,395,778	1,894,008,621

SHAREHOLDERS' EQUITY

Government of Canada		
6,000,000 shares of no par value capital stock of Canadian National Railway Company	359,963,017	359,963,017
1,235,180,591 shares of 4% preferred stock of Canadian National Railway Company	1,235,180,591	1,235,180,591
Capital investment of Government of Canada in the Canadian Government Railways	428,396,779	428,396,779
	2,023,540,387	2,023,540,387
Capital Stock of Subsidiary		
Companies owned by Public	4,345,185	4,345,185
	2,027,885,572	2,027,885,572
	$ 4,409,187,588	$ 4,270,568,786

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

NOTE 1: Material and Supplies

The inventory has been priced at laid down cost based on weighted average cost for ties, rails and fuel, latest invoice price for new materials in general stores and at estimated utility or sales value for usable second hand, obsolete and scrap materials.

NOTE 2: Investments in Affiliated Companies not Consolidated

Air Canada—

Canadian National owns all of the issued capital stock of Air Canada. Air Canada reports directly to the Government of Canada through the Minister of Transport. Its accounts are published separately and are not consolidated with those of Canadian National, and equity accounting has not been applied. The composition of Canadian National's investment in Air Canada, which is carried at cost, is:

Capital Stock	$ 5,000,000
Debentures	95,086,000
Advances	282,733,500
	$ 382,819,500

Jointly Operated Companies—

Effective January 1, 1973, Canadian National adopted equity accounting for its investments in jointly-operated companies, where appropriate. Investments in the remaining companies are carried at an aggregate amount of $3,540,500. Canadian National's equity in the net income of companies accounted for on the equity basis included in other income in 1973 was $5,402,851 of which $4,820,161 represents Canadian National's equity in retained earnings of these companies accumulated to December 31, 1972. The investments in jointly-operated companies as at December 31, 1973 are:

Chicago & Western Indiana Railroad Company	$ 8,552,775
The Detroit & Toledo Shore Line Railroad Company	6,397,161
Northern Alberta Railways Company	25,340,000
The Toronto Terminals Railway Company	9,449,750
Other	6,530,589
	$ 56,270,275

NOTE 3: Property Investment

Additions since January 1, 1923 have been recorded at cost and properties and equipment brought into the System at January 1, 1923 are included at the values appearing in the books of the several railways now comprised in the System to the extent that these have not been retired or replaced.

Depreciation on Canadian Lines: Depreciation accounting as adopted for equipment in 1940, for hotel properties in 1954 and for track and road structures and all other physical properties except land in 1956 has been continued in 1973. The depreciation rates used are based on the estimated service life of the properties but do not provide for depreciation which was not recorded in prior years under the replacement and retirement accounting principles then in force.

Depreciation on U.S. Lines: Replacement accounting for track and depreciation accounting for equipment and other property except land have been continued in accordance with the regulations of the Interstate Commerce Commission.

NOTE 4: Long-term Debt

BONDS

Rate %	Maturity (See Notes)		Currency in which Payable	Outstanding as at December 31 1973	1972
3¾	Feb. 1, 1974 (a)	Canadian National—20 Year Bonds	Canadian	$ 200,000,000	$ 200,000,000
2¾	June 15, 1975 (b)	Canadian National—25 Year Bonds	U.S.	6,000,000	6,000,000
5	May 15, 1977 (c)	Canadian National—18 Year Bonds	Canadian	74,438,500	75,706,000
4	Feb. 1, 1981	Canadian National—23 Year Bonds	Canadian	300,000,000	300,000,000
5¾	Jan. 1, 1985 (c)	Canadian National—25 Year Bonds	Canadian	86,032,000	87,977,000
5	Oct. 1, 1987 (c)	Canadian National—27 Year Bonds	Canadian	137,004,000	139,849,000
5½	Perpetual	Buffalo and Lake Huron—1st Mortgage Bonds	Sterling	795,366	795,366
5½	Perpetual	Buffalo and Lake Huron—2nd Mortgage Bonds	Sterling	1,228,398	1,228,398
Total Bonds				805,498,264	811,555,764
Government of Canada Loans					
Canadian Government Railways: Advances for Working Capital			Canadian	16,983,762	16,983,762
Financing and Guarantee Acts: Loans			Canadian	252,370,252	245,925,595
Refunding Act, 1955: Loans for Debt Redemption			Canadian	819,543,500	819,543,500
Total Government of Canada Loans				1,088,897,514	1,082,452,857
TOTAL LONG TERM DEBT				$ 1,894,395,778	$ 1,894,008,621

NOTES:

(a) Refinanced February 1, 1974 under the Refunding Act, 1955 by a Government of Canada Loan having a five-year term with interest at 7-3/8% per annum.

(b) Callable at par.

(c) Amounts of ½% may be purchased quarterly through Purchase Funds operated under the conditions of each issue.

NOTE 5: Capital Stock

The capital stock of the Canadian National Railway Company (other than the four percent preferred stock) and the capital investment of Her Majesty in the Canadian Government Railways are included in the net debt of Canada and disclosed in the historical record of government assistance to railways as shown in the Public Accounts of Canada.

NOTE 6: Pension Funds

The Company is liquidating the unfunded liabilities under its Pension Plans by making annual payments of both principal and interest as required by the Pension Benefits Standards Act. These payments have been charged to System expenses. As at December 31, 1973, based on the latest actuarial reviews, the unfunded liabilities, aggregating $702,255,137, are being liquidated by annual payments through September 30, 2027.

NOTE 7: Subsidies

(a) Carload freight services revenues include $27,000,000 receivable from the Government of Canada in respect of partial compensation for revenues foregone due to not implementing general rate increases in 1973.

(b) Payments under the Railway Act include amounts paid by the Government of Canada under authority of that Act in respect of certain uneconomic operations, services, and prescribed rates (At & East) which railways are thereby required to maintain. Claims cannot, in all cases, be filed before the end of the year in which the related losses occurred. The amounts are recognized in the accounts when they are approved for payment.

NOTE 8: Major Commitments

(a) Rental commitments under railway rolling stock lease arrangements for varying periods through to 1993 amount to approximately $495 million.

(b) Canadian National Railway Company has undertaken to guarantee the payment of principal and interest on a series of promissory notes which may be issued by Air Canada up to an aggregate principal amount of £13,000,000 sterling. The principal amount of the guaranteed notes outstanding as at December 31, 1973 was £12,142,062.

CONSOLIDATED INCOME STATEMENT FOR THE YEAR ENDED DECEMBER 31

	1973	1972
Railway Operating Revenues		
Carload freight services	$ 1,021,334,774	$ 939,567,704
Express and intermodal services	152,442,913	143,557,548
Passenger services	55,630,169	66,755,084
All other services	77,865,929	66,495,998
Payments under the Railway Act	93,566,155	40,742,079
Total Railway Operating Revenues	1,400,839,940	1,257,118,413
Railway Operating Expenses		
Road maintenance	212,818,240	195,256,833
Equipment maintenance	246,579,040	234,582,933
Transportation	548,431,667	507,368,025
Sales	32,717,600	30,642,222
Miscellaneous operations	85,558,053	66,492,352
General	155,820,313	116,408,760
Taxes	55,832,158	52,152,396
Equipment and joint facility rents	37,368,486	30,347,151
Total Railway Operating Expenses	1,375,125,557	1,233,250,672
Net Railway Operating Income	25,714,383	23,867,741
Other Income		
Net income (expense) from:		
Telecommunications department	16,998,510	17,012,227
Hotels	4,403,949	3,162,433
Separately operated trucking companies	3,354,274	2,464,306
Other sources	(1,965,567)	1,750,488
Total Other Income	22,791,166	24,389,454
Net Income before Interest on Debt	48,505,549	48,257,195
Interest Charges		
Total interest on debt	91,707,388	86,955,574
Less interest received on loans to Air Canada	21,877,784	20,875,908
Net Interest on Debt	69,829,604	66,079,666
Deficit	$ 21,324,055	$ 17,822,471

SOURCE AND APPLICATION OF FUNDS FOR THE YEAR ENDED DECEMBER 31

	1973	1972
Working Capital as at beginning of year	$ 22,185,962	$ 50,634,022
Source of Funds		
Provision for depreciation	130,217,075	126,399,029
Government of Canada in respect of deficit for the year	21,324,055	17,822,471
Retained proceeds from properties retired	17,660,561	14,815,553
Temporary government loans, as authorized by CNR Refunding Act, 1955, for payment of outstanding securities of Canadian National at maturity	—	100,000,000
Temporary government loans, as authorized by CNR Financing and Guarantee Acts of 1941 and 1942, for purchase of unmatured securities of Canadian National, as required by conditions of their issue	6,444,657	4,257,968
Other (net)	5,352,231	7,295,128
	180,998,579	270,590,149
Application of Funds		
Additions to property investment	193,684,973	173,149,242
Investments in affiliated companies	791,902	1,322,996
Deficit for the year	21,324,055	17,822,471
Retirement of matured securities of Canadian National	—	100,000,000
Purchase of unmatured securities of Canadian National, as required by conditions of their issue	6,057,500	6,743,500
	221,858,430	299,038,209
Decrease in Working Capital	40,859,851	28,448,060
Working Capital (Deficiency) as at end of year	$ (18,673,889)	$ 22,185,962

NOTE: Certain figures for 1972 have been reclassified for comparative purposes.

APPENDIX "C"

CANADIAN NATIONAL RAILWAYS—ANNUAL REPORT—1952

CONSOLIDATED BALANCE SHEET AT 31st. DECEMBER, 1952

ASSETS

Investments			
Road and equipment property	$2,367,435,701		
Improvements on leased property	1,170,841		
Miscellaneous physical property	68,231,230	$2,436,837,772	
Capital and other reserve funds:			
System securities at par	$ 748,500		
Other assets at cost	3,834,160	4,582,660	
Investments in affiliated companies		51,256,597	
Other investments:			
System securities at par	$ 205,000		
Other assets at cost	591,428	796,428	$2,493,473,45
Current Assets			
Cash		$ 15,361,916	
Special deposits		4,627,313	
Net balance receivable from agents and conductors		27,324,194	
Miscellaneous accounts receivable		20,854,458	
Material and supplies		102,509,769	
Interest and dividends receivable		54,562	
Accrued accounts receivable		5,810,854	
Other current assets		781,688	177,324,754
Deferred Assets			
Working fund advances		$ 509,855	
Insurance fund:			
System securities at par	$ 5,792,294		
Other assets at cost	7,050,756	12,843,050	
Pension fund:			
System securities at par	$ 9,010,500		
Other assets at cost	63,939,500	72,950,000	
Other deferred assets		2,216,508	88,519,413
Unadjusted Debits			
Prepayments		$ 928,168	
Discount on funded debt		3,045,818	
Other unadjusted debits		4,722,950	8,696,936
			$2,768,014,560

LIABILITIES

Stocks			
Capital stocks of subsidiary companies owned by public			$ 4,516,490
Funded Debt			
Owned by public		$ 589,738,535	
Held in special funds		15,756,294	
			605,494,829
Government of Canada Loans and Debentures			228,055,165
Current Liabilities			
Traffic and car-service balances		$ 8,325,518	
Audited accounts and wages payable		34,229,213	
Miscellaneous accounts payable		6,828,764	
Government of Canada		13,956,542	
Interest matured unpaid—Public		4,273,390	
Unmatured interest accrued		4,784,010	
Accrued accounts payable		18,342,167	
Taxes accrued		2,388,041	
Other current liabilities		2,019,428	
			95,147,073
Deferred Liabilities			
Pension liability		$ 72,950,000	
Other deferred liabilities		6,890,349	
			79,840,349
Reserves and Unadjusted Credits			
Insurance reserve		$ 12,843,050	
Accrued depreciation—Canadian Lines—Equipment only		171,768,146	
Accrued depreciation—U.S.Lines—Road and equipment		29,474,861	
Unadjusted credits		9,802,273	
			223,888,330
Government of Canada—Shareholder's Account—(See note)			
6,000,000 shares of no par value capital stock of Canadian National Railway Company		$ 396,518,135	
754,871,945 shares of 4% preferred stock of Canadian National Railway Company.		754,871,945	
Capital investment of Government of Canada in the Canadian Government Railways		379,682,244	
			1,531,072,324
Contingent Liabilities			
Major contingent liabilities, as shown on page 32			
			$2,768,014,560

Sterling and United States currencies converted at par of exchange.

T. J. GRACEY,
Comptroller.

NOTE:—The capital stock of the Canadian National Railway Company (other than the four percent preferred stock) and the capital investment of Her Majesty in the Canadian Government Railways are included in the net debt of Canada and are disclosed in the historical record of government assistance to railways as shown in the Public Accounts of Canada.

CERTIFICATE OF AUDITORS

We have examined the books and records of the companies comprising the Canadian National Railway System for the year ended the 31st. December, 1952.

In our opinion, proper books of account have been kept by the System, and the consolidated balance sheet at the 31st. December, 1952, and the relative consolidated income account for the year ended that date have been prepared on a basis consistent with that of the preceding year and are in agreement with the books of the System. The capital structure of the Canadian National Railways has been revised in accordance with the provisions of The Canadian National Railways Capital Revision Act, 1952.

The total amount of the investments in fixed properties and equipment as brought into the System accounts at the 1st. January, 1923, from the books of the several corporations and the Canadian Government Railways was accepted by us.

On the Canadian Lines, depreciation accounting for equipment has been applied from the 1st. January, 1940, retirement accounting continuing in effect for fixed properties.

Subsequent to the year end, settlement has been reached with the Brotherhood of Railroad Firemen and agreement in principle has been reached with the Brotherhood of Railroad Trainmen, resulting in wage increases retroactive to the 1st. April, 1952, which have not been given effect to in the accounts under review.

In our opinion, subject to the foregoing, the above consolidated balance sheet and the relative consolidated income account are properly drawn up so as to give a true and fair view of the state of the System's affairs at the 31st. December, 1952, and of the consolidated income and expense for the year.

The transactions of the System that have come under our notice have, in our opinion, been within the powers of the System. We are reporting to Parliament in respect of our annual audit.

GEORGE A. TOUCHE & CO.
Chartered Accountants.

2nd. March, 1953.

CANADIAN NATIONAL RAILWAYS

CONSOLIDATED INCOME ACCOUNT

	1952	1951
Railway Operating Revenues		
Freight	$ 536,723,241	$ 498,800,344
Passenger	48,466,128	47,475,661
Mail	7,907,232	7,311,445
Express department	35,820,500	30,670,031
Communications department	13,870,000	12,032,631
All other	32,432,314	28,544,008
Total operating revenues	$ 675,219,415	$ 624,834,120
Railway Operating Expenses		
Maintenance of way and structures	$ 121,363,896	$ 111,560,852
Maintenance of equipment	145,533,632	135,319,782
Traffic	11,192,183	10,429,825
Transportation	316,482,722	291,366,944
Miscellaneous operations	6,422,539	6,262,293
General	33,857,943	25,210,525
Total operating expenses	$ 634,852,915	$ 580,150,221
NET OPERATING REVENUE	$ 40,366,500	$ 44,683,899
Taxes and Rents		
Railway tax accruals	$ 13,921,243	$ 11,573,914
Equipment rents—Net debit	6,529,937	7,172,396
Joint facility rents—Net debit	420,996	340,140
Total taxes and rents	$ 20,872,176	$ 19,086,450
NET RAILWAY OPERATING INCOME	$ 19,494,324	$ 25,597,449
Other Income		
Income from lease of road	$ 46,808	$ 51,499
Miscellaneous rent income	1,220,473	1,109,768
Income from non-transportation property	727,591	476,693
Results of separately operated properties	721,748	1,079,385
Hotel operating income	535,509	588,485
Dividend income	401,611	414,411
Interest income	1,785,817	2,242,019
Miscellaneous income	1,829,618	1,324,414
Total other income	$ 7,269,175	$ 7,286,674
Deductions from Income		
Rent for leased roads	$ 478,483	$ 551,554
Miscellaneous rents	676,200	672,809
Interest on unfunded debt	269,805	236,287
Amortization of discount on funded debt	503,780	573,602
Miscellaneous income charges	384,639	488,825
Profit and loss—Net debit or *credit*	145,144	*1,422,073*
Total deductions from income	$ 2,458,051	$ 1,101,004
NET INCOME AVAILABDE FOR INTEREST	$ 24,305,448	$ 31,783,119
Interest Charges		
Interest on funded debt—Public	21,848,906	23,467,703
Interest on Government loans	2,314,215	23,347,412
Income deficit	—	$ *15,031,996*
SURPLUS—PAYABLE AS A DIVIDEND ON 4% PREFERRED STOCK	$ 142,327	—

NOTE:—No income tax payable on 1952 surplus

SOURCE AND APPLICATION OF FUNDS FOR THE YEAR ENDED DECEMBER 31, 1952

Working Capital as at beginning of year	$ 73,789,743
Source of Funds	
Provision for depreciation	29,910,391
Surplus for the year	142,327
Retained proceeds from properties retired	2,148,684
Temporary government loans as authorized by Financing and Guarantee Act 1952	106,866,796
Loan from Air Canada	2,500,000
Sale of 4% Preferred Stock	18,486,540
Other (Net)	2,485,512
	162,540,250
Application of Funds	
Additions to property investment	144,307,779
Surplus payable as dividend on 4% Preferred Stock	142,327
Retirement of Instalment Notes and Serial Equipment obligations	9,702,206
	154,152,312
Increase in Working Capital	8,387,938
Working Capital as at end of year	$ 82,177,681

NOTE: In 1952 a Source and Application of Funds Statement was not produced in this format and the above statement has been prepared for comparison with the 1973 Statement.

APPENDIX "D"

CANADIAN NATIONAL RAILWAYS

ISSUES OF 4% PREFERRED STOCK

1952—1973

1952	$ 18,486,540
1953	21,022,272
1954	19,206,314
1955	20,369,678
1956	23,132,994
1957	22,750,879
1958	20,966,489
1959	22,168,692
1960	21,096,001
1961	21,221,943
1962	21,939,665
1963	22,757,684
1964	24,601,897
1965	25,858,536
1966	28,043,377
1967	30,361,558
1968	30,376,193
1969	31,885,224
1970	33,432,529
1971	39,116,721
1972	— [1]
1973	— [1]
	$ 498,795,186

SUMMARY OF 4% PREFERRED STOCK

Issued under Section 3 of the Capital Revision Act (1952) in consideration of release of indebtedness to the Government for an equivalent amount	$ 736,385,405
Preferred stock issued 1952 to 1971 inclusive as above	498,795,186
Total Preferred Stock outstanding as per Balance Sheet 31 December 1973	$ 1,235,180,591

[1]Purchases by the Government of Canada of 4% preferred stock for the years 1972 and 1973 were authorized by Canadian National Railways Financing and Guarantee Act 1973 as follows:

1972	$ 40,021,399
1973	44,475,222
	$ 84,496,621

APPENDIX "E"

CANADIAN NATIONAL RAILWAYS

LIST OF SURPLUSES AND DEFICITS

	Surplus	Deficits
1952*	$ 142,327	
1953*	244,017	
1954		$ 28,758,098
1955*	10,717,689	
1956*	26,076,951	
1957		29,572,541
1958		51,591,424
1959		43,588,290
1960		67,496,777
1961		67,307,772
1962		48,919,454
1963		43,013,517
1964		38,725,904
1965		33,414,884
1966		24,593,217
1967		35,869,197
1968		29,176,530
1969		24,646,454
1970		29,709,064
1971		24,267,741
1972		17,822,471
1973		21,324,055

*Payable as dividend on 4% preferred stock.

APPENDIX "F"

SUMMARY OF REFUNDINGS UNDER CNR REFUNDING ACT, 1955

(Data Supplied by the Department of Finance)

Original securities refunded to January 18, 1971 (as attached)		$ 717,216,815
Less—temporary loans repaid by CNR from internal funds		49,177,592
Original securities refunded through 1955 Refunding Act, to January 18, 1971		668,039,223
New refundings—		
December 5, 1971	$ 178,443,500	
January 1, 1972	100,000,000	
		278,443,500
Total		946,482,723
Source of refundings:		
Substituted securities		188,166,574
Less:—replaced by temporary loans (below)		
1967	6,307,351	
1968	54,920,000	
		61,227,351
		126,939,223
Temporary Government loans—		
Total December 31, 1970		501,100,000
Made January 18, 1971		40,000,000
Made in 1971 and 1972 (as above)		278,443,500
		819,543,500
		946,482,725
Total authority required under 1955 Refunding Act—		
Substituted securities issued		188,166,574
Temporary loans for which substituted securities may be issued		819,543,500
		$ 1,007,710,074
	say	$ 1,000,000,000

Securities in the hands of the public maturing after January 1, 1972:

Date	Description	Amount Outstanding at Dec. 31/70
Feb. 1/74	3¾% CN 20 year bonds	$ 200,000,000
June 15/75	2¾% CN 25 year bonds	6,000,000 (U.S.)
May 15/77	5% CN 18 year bonds	78,840,000
Feb. 1/81	4% CN 23 year bonds	300,000,000
Jan. 1/85	5¾% CN 25 year bonds	91,980,000
Oct. 1/87	5% CN 27 year bonds	146,756,000
		$ 823,576,000

CNR's total long term debt as of Dec. 31, 1970 is comprised as follows:

Securities in the hands of the public maturing after Jan. 1/72	$ 823,576,000
Securities maturing during 1971 and on Jan. 1/72	318,443,500
Refunding Act, 1955—Loans	501,100,000
Financing and Guarantee Act Loans	235,305,815
Perpetual Debt	2,023,764
Canadian Government Railways advances for working capital	16,983,762
CNR long term debt at Dec. 31, 1970	$ 1,897,432,841

CANADIAN NATIONAL RAILWAYS

ORIGINAL SECURITIES SUBSTITUTED FOR UNDER THE CANADIAN NATIONAL RAILWAYS REFUNDING ACT, 1955

Summary of refunding (for details, see attached)—	
1956	$ 59,205,754
1957	73,267,583
1958	14,385,886
1959	38,550,000
1960	2,757,351
1961	2,713,388
1962	34,464,204
1963	250,000,000
1966	35,000,000
1967	115,992,649
1968	880,000
1969	50,000,000
1971	40,000,000
Total	$717,216,815

ORIGINAL SECURITIES REFUNDED IN 1956

Date of Origin	Date of Maturity	Description	Amount
1951	Jan. 15/56	CNR 2¾% Equipment Trust Series V	$ 675,000
1931	Feb. 1	CNR 4½% 25 year Bonds	67,368,000
1941	Mar. 1	Nfld. Railway 2½% Instalment Notes	71,103
1948	Mar. 15	CNR 2⅛% Equipment Trust Series S	2,800,000
1950	Mar. 15	CNR 2¼% Equipment Trust Series U	1,100,000
1948	May 1	CNR 2¼% Equipment Trust Series T	1,075,000
1951	July 15	CNR 2¾% Equipment Trust Series V	675,000
1906	Sept. 1	Pembrooke Southern Ry. Co. 1st Mortgage Bonds	150,000
1941	Sept. 1	Nfld. Railway 2½% Instalment Notes	71,103
1950	Sept. 15	CNR 2¼% Equipment Trust Series U	1,100,000
1948	Nov. 1	CNR 2¼% Equipment Trust Series T	1,075,000
1947	Dec. 1	CNR 2% Equipment Trust Series R	560,000
			$ 76,720,206
		Less amount refunded under the 1951 Refunding Act	17,514,452
		Total amount of original securities refunded in 1956 under 1955 Refunding Act	$ 59,205,754

ORIGINAL SECURITIES REFUNDED IN 1957

1951	Jan. 15/57	CNR 2¾% Equipment Trust Series V	675,000
1941	Mar. 1	Nfld. Railway 2½% Instalment Notes	71,583
1948	Mar. 15	CNR 2⅛% Equipment Trust Series S	2,800,000
1950	Mar. 15	CNR 2¼% Equipment Trust Series U	1,100,000
1948	May 1	CNR 2¼% Equipment Trust Series T	**1,075,000
1927	July 1	CNR 4½% 30 year Bonds	**64,136,000
1951	July 15	CNR 2¾% Equipment Trust Series V	675,000
1950	Sept. 15	CNR 2¼% Equipment Trust Series U	1,100,000
1948	Nov. 1	CNR 2¼% Equipment Trust Series T	1,075,000
1947	Dec. 1	CNR 2% Equipment Trust Series R	560,000
		Total amount of original securities refunded in 1957 under the 1955 Refunding Act	$ 73,267,583

ORIGINAL SECURITIES REFUNDED IN 1958

Date of Origin	Date of Maturity	Description	Amount
1951	Jan. 15/58	CNR 2¾% Equipment Trust Series V	$ 675,000
1948	Mar. 15	CNR 2¼% Equipment Trust Series S	2,800,000
1950	Mar. 15	CNR 2¼% Equipment Trust Series U	1,100,000
1948	May 1	CNR 2¼% Equipment Trust Series T	1,075,000
1951	July 15	CNR 2¾% Equipment Trust Series V	675,000
1910	July 20	Canadian Northern Ry. Co. 1st Mortgage Debenture Stock	5,505,863
1950	Sept. 15	CNR 2¼% Equipment Trust Series U	1,100,000
1948	Nov. 1	CNR 2¼% Equipment Trust Series T	1,075,000
1929	Nov. 15	Province of New Brunswick Bonds	380,023
Total amount of original securities refunded in 1958 under the 1955 Refunding Act			$ 14,385,886

ORIGINAL SECURITIES REFUNDED IN 1959

1939	Jan. 15/59	CNR 20 year 3% Bond	35,000,000
1951	Jan. 15	CNR 2¾% Equipment Trust Series V	*675,000
1950	Mar. 15	CNR 2¼% Equipment Trust Series U	*1,100,000
1951	July 15	CNR 2¾% Equipment Trust Series V	*675,000
1950	Sept. 15	CNR 2¼% Equipment Trust Series U	*1,100,000
Total amount of original securities refunded in 1959 under the 1955 Refunding Act			$ 38,550,000

ORIGINAL SECURITIES REFUNDED IN 1960

1951	Jan. 15/60	CNR 2¾% Equipment Trust Series V	$ *675,000
1950	Mar. 15	CNR 2¼% Equipment Trust Series U	*1,100,000
1911	May 4	Canadian Northern Alberta Ry. Co. 3½% 1st Mortgage Debenture Stock	*307,351
1951	July 15	CNR 2¾% Equipment Trust Series V	*675,000
Total amount of original securities refunded in 1960 under the 1955 Refunding Act			$ 2,757,351

ORIGINAL SECURITIES REFUNDED IN 1961

Date of Origin	Date of Maturity	Description	Amount
1951	Jan. 15/61	CNR 2¾% Equipment Trust Series V	$ 675,000
1911	May 19	Canadian Northern Ontario Co. 3½% 1st Mortgage Debenture Stock	2,038,388
Total amount of original securities refunded in 1961 under the 1955 Refunding Act			$ 2,713,388

ORIGINAL SECURITIES REFUNDED IN 1962

1905	Jan. 1/62	Grand Trunk Pacific 3% 1st Mortgage Bonds	26,465,130
1914	Jan. 1	Grand Trunk Pacific 4% Bonds	7,999,074
Total amount of original securities refunded in 1962 under the 1955 Refunding Act			$ 34,464,204

ORIGINAL SECURITIES REFUNDED IN 1963

1954	Feb. 1/63	CNR 2¾% 8 year 1½ month bonds	250,000,000
Total amount of original securities refunded in 1963 under the 1955 Refunding Act			$ 250,000,000

ORIGINAL SECURITIES REFUNDED IN 1966

1949	Jan. 3/66	CNR 3% 17 year bonds	35,000,000
Total amount of original securities refunded in 1966 under the 1955 Refunding Act			$ 35,000,000

ORIGINAL SECURITIES REFUNDED IN 1967

1947	Jan. 2/67	CNR 2¾% 20 year bonds	50,000,000
1960	Apr. 1	CNR 4½% 6½ year bonds	72,300,000
			$ 122,300,000
Less portion of $72,300,000 which acts as sustituted security*			6,307,351
Total amount of original securities refunded in 1967 under the 1955 Refunding Act			$ 115,992,649

*$6,307,351 of the proceeds of the $73,500,000 1960 6½ year 4½% bonds were used to repay temporary loans from the Minister of Finance, which in turn were used to purchase securities maturing in 1959 and 1960 marked with * above. Thus, $6,307,351 of the $72,300,000 refunded in 1967 does not represent original securities but substituted securities.

ORIGINAL SECURITIES REFUNDED IN 1968

Date of Origin	Date of Maturity	Description	Amount
1959	May 15/68	CNR 5% 9 year bonds	55,800,000
Less portion of $55,800,000 which qualifies as substituted security			**54,920,000
Total amount of original securities refunded in 1968 under the 1955 Refunding Act			$ 880,000

**On May 15, 1959 CN issued securities totalling $145.8 million, $65.2 million of the proceeds of which were used to repay temporary loans from the Minister of Finance which, in turn, had been used to purchase securities maturing in 1957 marked ** above. The securities issued on May 15, 1959 were $57,600,000 in 9 year 5% bonds and $88,200,000 in 18 year 5% bonds. The $88,200,000 issue matures in 1977 while the $57,600,000 issue, of which $55,800,000 was still outstanding, matured in 1968. It has been assumed that the proceeds of the $57,600,000 were used to make an advance of $2,680,000 to Air Canada in 1959 and that the $54,920,000 balance of the proceeds of this issue went towards repayment of temporary loans to the Minister of Finance. It is also assumed that the $10,080,000 balance of the $65,000,000 marked ** above was repaid to the Minister of Finance out of the proceeds of the $88,200,000 of 18 year 5% bonds.

ORIGINAL SECURITIES REFUNDED IN 1969

1949	Sept. 15/69	CNR 2¾% 20 year Bond	70,000,000
Less Portion repaid by CN from internal funds			20,000,000
Total amount of original securities refunded in 1969 under the 1955 Refunding Act			$ 50,000,000

ORIGINAL SECURITIES REFUNDED IN 1971

1950	Jan. 16/71	CNR 2¾% 21 year Bond	$ 40,000,000
Total amount of original securities refunded in 1971 under the 1955 Refunding Act			$ 40,000,000

APPENDIX "G"

CANADIAN NATIONAL RAILWAYS

SHAREHOLDERS' EQUITY

6,000,000 shares of no par value capital stock of Canadian National Railway Company

31 December		Changes during year	
1952	$ 396,518,135		
1958	389,518,135	($7,000,000)	(1)
1959	386,614,985	(2,903,150)	(2)
1960	359,963,017	(26,651,968)	(3)
1973	359,963,017	—	

NOTES:

(1) To charge capital losses for years 1956/7/8 relating to steam locomotive retirements, in accordance with provisions of Section 10(2) of the Capital Revision Act 1952.

(2) To charge all accumulated capital losses to the end of 1959, not previously written off, related to steam locomotive retirements, Capital Revision Act 1952.

(3) To charge the capital losses for the year 1960 from the retirement of steam locomotives Capital Revision Act 1952.

APPENDIX "H"

CANADIAN NATIONAL RAILWAYS

SHAREHOLDERS' EQUITY

Capital investment of Government of Canada in the Canadian Government Railways

Balance at 31 December		Changes during year		
1951	$379,877,514	1952	($195,270)	
1952	379,682,244	1953	(44,529)	
1953	379,637,715	1954	136,800	
1954	379,774,515	1955	139,765	
1955	379,914,280	1956	1,235,348	
1956	381,149,628	1957	429,461	
1957	381,579,089	1958	50,970,050	(1)
1958	432,549,139	1959	256,335	
1959	432,805,474	1960	2,789,407	
1960	435,594,881	1961	2,308,161	
1961	437,903,042	1962	1,363,994	
1962	439,267,036	1963	1,645,579	
1963	440,912,615	1964	261,821	
1964	441,174,436	1965	106,856	
1965	441,281,292	1966	174,000	
1966	441,455,292	1967	(13,060,865)	(2)
1967	428,394,427	1968	(5,070)	
1968	428,389,357	1969	7,422	
1969	428,396,779	1970	—	
1970	428,396,779	1971	—	
1971	428,396,779	1972	—	
1972	428,396,779	1973	—	
1973	428,396,779			

NOTES:

(1) Entrustment of Hudson Bay Railway and Northwest Communications System.

(2) Return of C.G.R. Entrusted property—Newfoundland Vessels and Docks.

APPENDIX "I"

CANADIAN NATIONAL RAILWAYS

TABULATION OF NEW MONIES AUTHORIZED UNDER FINANCING AND GUARANTEE ACTS FOR CN's CAPITAL REQUIREMENTS

($ Millions)

Year	Debt (less Air Canada reqmts) Total	Less First Half Succeeding Year	Current Year	Preferred Stock
1952.....	182.1	50.0	132.1	(1)
1953.....	200.3	80.0	120.3	(1)
1954.....	204.0	45.0	159.0	(1)
1955.....	92.0	40.0	52.0	(1)
1956.....	159.4	35.0	124.4	(1)
1957.....	199.1	38.0	161.1	(1)
1958.....	230.5	79.0	151.5	(1)
1959.....	155.7	25.5	130.2	(1)
1960.....	67.8	5.0	62.8	(1)
1961.....	Nil	Nil	Nil	21.2
1962.....	Nil	Nil	Nil	21.9
1963.....	Nil	Nil	Nil	22.8 (2)
1964.....	Nil	Nil	Nil	24.6 (2)
1965.....	Nil	Nil	Nil	25.9
1966.....	Nil	Nil	Nil	28.0 (3)
1967.....	Nil	Nil	Nil	30.4 (3)
1968.....	16.0	6.0	10.0(5)	30.4
1969.....	19.0	2.0	17.0(5)	31.9
1970.....	12.0	2.0	10.0(5)	33.4
1971.....	Nil	Nil	Nil	39.1
1972.....	Nil	Nil	Nil	40.0 (4)
1973.....	21.0	8.0	13.0(5)	44.5 (4)

(1) Provided for by Canadian National Rlys' Capital Rev. Act. 1952

(2) Provided for by Canadian National F & G Act 1962–3

(3) Provided for by Canadian National F & G Act 1965–6

(4) Provided for by Canadian National F & G Act 1973

(5) Loans authorized for Branch Line construction but not actually made.

Montreal, Que. April 1974

APPENDIX "J"

AIR CANADA

1973 FINANCIAL STATEMENTS

STATEMENT OF INCOME AND RETAINED EARNINGS
(Dollars Shown in Thousands)

	Year Ended December 31	
	1973	1972
Operating Revenues		
Passenger	$ $568,939	$ 473,400
Freight and express	69,137	59,599
Mail	17,839	16,159
Charter	25,742	22,185
Incidental services—net	16,393	11,919
Total Operating Revenues	698,050	583,262
Operating Expenses		
Flying operations	151,673	121,648
Maintenance	103,485	86,848
Passenger service	82,875	65,980
Aircraft and traffic servicing	109,875	89,824
Sales and promotion	94,199	84,209
General and administrative	33,368	25,251
Depreciation and obsolescence	76,182	64,010
Total Operating Expenses	651,657	537,770
Operating Income	46,393	45,492
Non-Operating Expenses (Income)		
Interest on long term debt	38,912	32,477
Interest capitalized	(3,602)	(2,712)
Loss on disposal of assets	494	967
Non-operating income—net	(1,429)	(2,456)
Total Non-Operating Expense	34,375	28,276
Income before Income Taxes	12,018	17,216
Income Taxes—Deferred	5,895	8,568
Net Income	6,123	8,648
Retained Earnings		
Balance at beginning of year	42,599	34,151
Dividend	(200)	(200)
Balance at End of Year	$ 48,522	$ 42,599

BALANCE SHEET AT DECEMBER 31

(Dollars Shown in Thousands)

ASSETS

	1973	1972
Current		
Cash and short term investments	$ 4,155	$ 45,900
Accounts receivable	102,278	66,105
Spare parts, materials and supplies	36,359	25,683
Prepaid expenses	2,611	2,256
Deferred income taxes	10,288	10,157
Total Current Assets	155,691	150,101
Investment in Other Companies—at Cost	7,815	8,627
Property and Equipment	826,737	675,705
Deferred Charges –Less Amounts Amortized	5,650	4,818
	$ 995,893	$ 839,251

LIABILITIES

	1973	1972
Current		
Bank indebtedness	$ 78,105	$ 4,989
Accounts payable and accrued liabilities	75,873	63,916
Salaries and wages	21,293	22,859
Unearned transportation revenue	27,280	23,534
Interest and dividend payable	9,622	7,210
Current portion of long term debt	4,675	528
Total Current Liabilities	216,848	123,036
Long Term Debt	690,995	640,114
Deferred Income Taxes	34,528	28,502
SHAREHOLDERS' EQUITY		
Share Capital		
Authorized 250,000 shares par value $100 each		
Issued and fully paid, 50,000 shares	5,000	5,000
Retained Earnings	48,522	42,599
Total Shareholders' Equity	53,522	47,599
	$ 995,893	$ 839,251

AIR CANADA

STATEMENT OF SOURCE AND APPLICATION OF FUNDS

(Dollars Shown in Thousands)

	Year Ended December 31	
	1973	1972
Source of Funds		
Net income	$ 6,123	$ 8,648
Items not affecting working capital		
Deferred income taxes	6,026	8,331
Depreciation	71,809	61,636
Amortization and other items	1,922	814
Funds from operations	85,880	79,429
Additions to long term debt	58,314	8,512
Proceeds from disposal of property and equipment	6,316	1,491
Proceeds from investments	814	754
Total Source of Funds	151,324	90,186
Application of Funds		
Property and equipment and progress payments	230,213	84,988
Reductions to long term debt	7,432	—
Deferred charges	1,701	195
Dividend	200	200
Investment in other company	—	485
Total Application of Funds	239,546	85,868
Increase (Decrease) In Working Capital	$ (88,222)	$ 4,318

AIR CANADA

NOTES TO FINANCIAL STATEMENTS

1. Cash and Short Term Investments

The Corporation entered into an agreement during 1972 to acquire an interest in Wardair Canada Ltd. The completion of the transaction is subject to certain conditions including final approval by the Government of Canada. Cash and short term investments include $2,700,000 plus accrued interest held in escrow in connection with the agreement.

2.* Spare Parts, Materials and Supplies

	1973	1971
	($000)	($000)
Spare Parts—cost	49,718	39,597
Accumulated Obsolescence	18,120	18,002
	31,598	21,595
Materials and Supplies—cost	4,761	4,088
	38,359	25,683

The Corporation provides for the obsolescence of aircraft spare parts, less their estimated residual value, by charges to operating expenses over the service life of the related aircraft fleet.

3. Property and Equipment

	1973	1972
	($000)	($000)
Cost		
Flight equipment and components	908,718	706,563
Ground equipment and facilities	253,896	238,966
	1,162,614	945,529
Accumulated depreciation and amortization	401,632	335,154
	760,982	610,375
Progress payments	65,755	65,330
	826,737	675,705

Depreciation and amortization is provided on a straight line basis and is based on the following estimated useful lives:

Flight Equipment and Components	
Boeing 747	16 years
Lockheed 1011—owned	16 years
—leased	15 years
DC-8	14 years
DC-9	12 years
Viscount (Fully Depreciated)	—
Ground Equipment and Facilities	5 to 30 years.

*During 1973 the Corporation commenced leasing two L-1011 aircrat, jointly with another airline, for a period of 15 years. For accounting purposes these aircraft are treated as though they are owned. Lease obligations, excluding the portion related to interest, have been included with long term debt.

4. Long Term Debt

	Principal Amount	
	1973	1972
	($000)	($000)
Canadian National Railway Co. and Government of Canada		
—Notes and debentures customarily renewed as they mature		
Demand notes—3.5%	27,000	27,000
6 months revolving notes—3.9%–7.1%	227,371	227,371
Notes and debentures:		
1973 (3.9—7.4%)	—	22,680
1976 (5.2%)	33,342	33,342
1977 (5.2—6.6%)	33,360	33,360
1978 (6.5—7.0%)	22,680	—
1979 (5.6—6.4%)	67,000	67,000
1980 (6.7—7.2%)	75,000	75,000
1980 (6.8%)	15,000*	15,000*
1981 (4.2—7.6%)	6,500	6,500
1981 (7.6%)	39,783*	39,783*
1985 (5.9%)	17,497	17,497
1987 (5.2%)	67,069	67,069

*Payable in U.S. Funds.

	Principal Amount	
	1973	1972
	($000)	($000)
5½% Notes Payable in Pounds Sterling in semi-annual payments of principal plus interest over 10 years to 1984	29,703	9,040
6% Notes Payable in U.S. Funds in semi-annual payments of principal plus interest over 10 years to 1984	14,362	—
Aircraft lease obligation payable in U.S. Funds in equal semi-annual amounts over 15 years to 1987 (Note 3)	17,234	—
*Other long term debt	2,769	—
	695,670	640,642
Less current portion of Long Term Debt	4,675	528
	690,995	640,114

Long Term Debt payable in foreign currencies has been converted at the exchange rates prevailing at the dates of issue. Based on exchange rates at December 31, 1973, the principal amounts would be lower by approximately $5,420,000.

5. Commitments

Commitments for the acquisition of 12 aircraft and related spare engines at December 31, 1973, after deducting progress payments, amounted to approximately $120,000,000. Subsequent to December 31, 1973, the Corporation committed to purchase an additional Boeing 747 and 6 Boeing 727's at an approximate cost of $90,000,000.

Anticipated delivery of aircraft is as follows:

	1974	1975
Douglas DC-9	2	
Lockheed L-1011	4	
Boeing 747	2	
Boeing 727	5	6

Commitments for ground facilities and equipment amount to $13,000,000.

There is a commitment to a supplier to use 100,000 hours of its services in each of the next two years; the cost of comparable services in 1973 was $1,700,000.

Annual rental payments under long term facilities leases in effect at December 31, 1973 amount to $8,569,000.

6. Pensions

The Corporation is retiring the unfunded liability of its pension plans by annual payments of $2,097,000 as required by the Pension Benefits Standards Act by charges to operations. The actuarilly determined present value of these amounts is approximately $22,000,000.

7. Comparative Figures

Certain figures for the previous year have been reclassified to conform with the current year's presentation.

Published under authority of the Senate by the Queen's Printer for Canada

Available from Information Canada, Ottawa, Canada.

SECOND SESSION—TWENTY-NINTH PARLIAMENT

1974

THE SENATE OF CANADA

PROCEEDINGS OF THE

STANDING SENATE COMMITTEE ON

TRANSPORT AND COMMUNICATIONS

The Honourable MAURICE BOURGET, *Deputy Chairman*

Issue No. 5

FRIDAY, MAY 3, 1974

Complete Proceedings on Bill C-27, intituled:

An Act to facilitate the relocation of railway lines or rerouting of railway traffic in urban areas and to provide financial assistance for work done for the protection, safety and convenience of the public at railway crossings

---

REPORT OF THE COMMITTEE

(Witnesses: See Minutes of Proceedings)

27426—1

STANDING SENATE COMMITTEE ON
TRANSPORT AND COMMUNICATIONS

The Honourable J. Campbell Haig, *Chairman.*

The Honourable Maurice Bourget, *Deputy Chairman.*

The Honourable Senators:

Argue, H.
Blois, F. M.
Bourget, M.
Buckwold, S. L.
Denis, A.
Eudes, R.
*Flynn, J.
Forsey, E.
Fournier, E.
(Madawaska-Restigouche)
Graham, B. A.
Haig, J. C.
Langlois, L.
Lawson, E. M.
*Martin, P.
McElman, C.
McNamara, W. C.
Molgat, G.
Petten, W. J.
Prowse, J. H.
Riley, D.
Smith, D.
Welch, F. C.—(22)

20 Members

(Quorum 5)

*Ex officio members

Order of Reference

Extract from the Minutes of the Proceedings of the Senate, May 2, 1974:

Pursuant to the Order of the Day, the Honourable Senator Cameron moved, seconded by the Honourable Senator Perrault, that the Bill C-27, intituled: "An Act to facilitate the relocation of railway lines or rerouting of railway traffic in urban areas and to provide financial assistance for work done for the protection, safety and convenience of the public at railway crossings", be read the second time.

After debate, and—
The question being put on the motion, it was—
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Cameron moved, seconded by the Honourable Senator Laing, P.C., that the Bill be referred to the Standing Senate Committee on Transport and Communications.

The question being put on the motion, it was—
Resolved in the affirmative.

Robert Fortier,
Clerk of the Senate

Minutes of Proceedings

May 3, 1974.

Pursuant to adjournment and notice the Standing Senate Committee on Transport and Communications met this day at 10:30 a.m.

Present: The Honourable Senators Bourget (*Deputy Chairman*), Argue, Blois, Buckwold, Forsey, Fournier (*Madawaska-Restigouche*), Graham, McElman, McNamara and Riley. (10)

In attendance: Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

The Committee proceeded to the examination of Bill C-27 intituled "An Act to facilitate the relocation of railway lines or rerouting of railway traffic in urban areas and to provide financial assistance for work done for the protection, safety and convenience of the public at railway crossings".

The following witnesses were heard in explanation of the Bill:

Mr. Homer B. Neilly, Policy Adviser,
Surface Transportation, Ministry of Transport;

Mr. D. F. Ryan, Director General of Development,
Ministry of State for Urban Affairs;

Mr. A. G. Hibbard, Acting Director of Engineering,
Canadian Transport Commission.

On Motion duly put it was Resolved to Report the said Bill without amendment.

At 11:50 a.m. the Committee adjourned to the call of the Chairman.

ATTEST:

Denis Bouffard,
Clerk of the Committee.

Report of the Committee

Friday, May 3, 1974.

The Standing Senate Committee on Transport and Communications to which was referred Bill C-27, intituled: "An Act to facilitate the relocation of railway lines or rerouting of railway traffic in urban areas and to provide financial assistance for work done for the protection, safety and covenience of the public at railway crossings", has, in obedience to the order of reference of Thursday, May 2, 1974, examined the said Bill and now reports the same without amendment.

Respectfully submitted.

Maurice Bourget,
Deputy Chairman.

The Standing Senate Committee on Transport and Communications

Evidence

Ottawa, Friday, May 3, 1974

The Standing Senate Committee on Transport and Communications, to which was referred Bill C-27, to facilitate the relocation of railway lines or rerouting of railway traffic in urban areas and to provide financial assistance for work done for the protection, safety and covenience of the public at railway crossings, met this day at 10.30 a.m. to give consideration to the bill.

Senator Maurice Bourget (*Deputy Chairman*) in the Chair.

The Deputy Chairman: Honourable senators, this morning we have before us Bill C-27, which concerns the relocation of railway lines and providing financial assistance for such work. We have as witnesses this morning Mr. D. F. Ryan of the Ministry of State for Urban Affairs; Mr. H. B. Neilly, of Policy Planning and Major Projects, Ministry of Transport; and Mr. A. G. Hibbard of the Canadian Transport Commission. I asked these gentlemen whether they wished to make some remarks or comments before honourable senators ask any questions. They told me they have no comments to make, but they would be glad to answer questions.

Senator Buckwold: I have a general comment I should like to make. Yesterday in the Senate I made a short speech in which I indicated that before my appointment to the Senate I was Mayor of Saskatoon. That city, in about the year 1961, completed a deal with the Canadian National Railways by which we moved the railway right out of the centre of downtown Saskatoon. The city negotiated with them, paid them their millions of dollars, they moved out and built new yards. I pass on this information to indicate that I have gone through the mechanics of such a deal, which was a difficult one. The results have been so spectacularly successful that I would give every encouragement to senators to support this bill to the very best of their ability. I pass this on, in a sense, in appreciation of the departments for this move—which we would have liked to have seen long before.

The first question I would have is this. Is there any retroactivity in this bill? I do not have to have an answer to that. I presume there is no claim our city could have for, say, 50 per cent of the cost of that 1961 project. However, I would guess that we probably did better, because the cost then would be much less than even 50 per cent of the comparable cost today, so we have no regrets.

I should like to refer to the importance of connecting transportation to downtown and the implications in this bill financially to provide for rapid transit from passenger facilities—and we talk basically of passenger facilities—to downtown. For example, Ottawa has moved its station out, but now has the problem that the people are not using the railroad because it is not convenient. Could you outline whether in the planning process, in the capital program and in the continuing operation, that will normally be a subsidized operation? In providing good transportation downtown, will there be any assistance through this bill to the municipality?

Mr. Homer B. Neilly, Policy Adviser, Surface Transportation, Ministry of Transport: There is no provision for special assistance for rapid transit or local transportation. However, there is provision in the bill that the transportation plan to be prepared as part of a relocation project can include such things as use of railway rights of way for rapid transit and their reservation for rapid transit. That is one of the possibilities under the plan.

Senator Buckwold: Would this just be in the planning concept?

Mr. Neilly: Yes.

Senator Buckwold: Who pays the capital cost? If a city wanted to use this legislation and wanted to use a right of way, say to have a bus going down the former right of way, would the capital cost involved be part of the project cost?

Mr. Neilly: For the most part I would say no, but there is planning going on within the Ministry of Transport which might result in grants for rapid transit, or for projects of the type that you mention. There is nothing available at this moment specifically for that purpose.

Mr. D. F. Ryan, Director General of Development, Ministry of State for Urban Affairs: If I might comment on that, I could say that, in point of fact, if it meant transferring ownership of the land from the railway to some other owner like the city, that would figure in the balance sheet in arriving at net railway cost and would be subject to a 50 per cent federal contribution.

Senator Buckwold: If the municipality bought the right-of-way.

Mr. Ryan: Yes, or if the province bought it.

Senator Buckwold: In the Saskatoon experience around 30 acres of land were involved in downtown Saskatoon. The city as part of its deal took over from the railroad the complete right-of-way of the former CNR main line and turned it into a freeway at relatively low cost, in the sense that the land then became a freeway and is now the major traffic artery into downtown Saskatoon.

In addition, the city negotiated the through streets, some minor open spaces and this type of thing. That was the only land the city got out of the deal. The railroad retained ownership of the rest.

What you are suggesting, then, is that in that type of circumstance what the city paid for the land to which they acquired title would be part of the capital cost?

Mr. Ryan: The way the calculation reads is that taking the net cost of rail relocation, which would be the cost of the new facilities less what they received for their old facilities, that net cost would be shared 50 per cent. If in point of fact their old facilities involved disposing of their existing rights-of-way for some consideration and acquiring new rights-of-way for another consideration, then that difference is what would be shared. One can say that to the extent that this land was made available to the city to acquire it, then they were assisted, in that the railway's costs of relocation were subject, as to 50 per cent, to a federal grant. So I would have to say it is an indirect benefit rather than a direct contribution to the acquisition of the land itself.

Senator Buckwold: I can see that it is not going to be quite as simple as it might appear.

Do you envisage, then, the basic concept of this being that railroads will in fact maintain ownership of the land, except for whatever is turned over to the municipality for street purposes or open space purposes and so on, and that the major cost will be what the municipality will pay to the railroad for building new facilities in order to provide their railroad services?

Mr. Ryan: Fortunately, the act is extremely flexible on this issue. What it says, in point of fact, is that there is no imposed solution; that in each case the ownership of the abandoned railway lands will be decided in terms of what is best for that particular locality. That can range all the way from the railways' retaining ownership to their passing it to another public agency, whether municipal or provincial, or, in the last resort, getting the federal government to take it over in a trusteeship role until it is put into its new use.

So there is a complete range of possibilities as to the ownership of the vacated property.

Senator Buckwold: Has this bill been reviewed by the Canadian Federation of Mayors and Municipalities? If so, has it met with their approval?

Mr. Ryan: If I had to look for the staunchest support for this bill, that is the first place I would look.

Senator Buckwold: Right. In other words, to the mayors of the cities which will be involved, this bill in its present form is acceptable?

Mr. Ryan: The CFMM were given copies of this bill on the day it was tabled in the House of Commons, and I have heard nothing but enthusiastic support for it from them.

Senator Buckwold: I suggest that that is the greatest endorsement which one could get for the provisions of the bill. Thank you, Mr. Chairman.

The Deputy Chairman: Was this discussed with the provinces also?

Mr. Ryan: The bill itself could not be discussed with the provinces because it had not been introduced in the House of Commons, but one can say that on at least two occasions the principles of the bill were discussed with the provinces. The most notable occasion was the tri-level conference on urban affairs in Edmonton last October. That is when the intentions of the government were made known vis-à-vis this bill. I would say they were well received by the provinces.

The Deputy Chairman: There is no doubt about that, but I wanted to know if it had been discussed. Mr. Neilly, have you something to add to that?

Mr. Neilly: Yes, Mr. Chairman. In addition to that, there have been many representations over the years, for the last 20 years at least, with respect to the need for larger grants under the Railway Grade Crossing Fund, which is covered by Part III of the bill, and, generally, also the need for what we are calling "special assistance" for very expensive grade separations, where the costs are abnormal. I am sure that many municipalities will be pleased with the increased grants available under the bill.

The Deputy Chairman: I know that Quebec City will be pleased.

Senator Fournier (Madawaska-Restigouche): Mr. Chairman, with respect to the Ottawa station, do the witnesses know whether the taxis operating from the station to the centre of the city are operating under a franchise?

Mr. Neilly: I am sorry, I cannot answer that question. I don't know.

Senator Fournier (Madawaska-Restigouche): Who would have the answer to that?

Mr. A. G. Hibbard, Acting Director of Engineering, Canadian Transport Commission: The railway company, I believe.

The Deputy Chairman: Both the CN and CP?

Mr. Hibbard: The CN and CP, yes.

Senator Forsey: CP hardly exists any more for purposes of passenger transportation in Ottawa.

Mr. Hibbard: That is right. Only "The Canadian" goes through Ottawa.

Senator Forsey: And the train which goes to Montebello.

Senator Fournier (Madawaska-Restigouche): In my opinion, so far as this whole taxi situation is concerned, the public is being taken for a ride. I have been given to understand that the franchise for taxi service is held by the Canadian National. It would be most interesting at some later date to examine a copy of that franchise agreement to see just what the obligations of the taxis are. Anyone who has had to use the taxi service from that railway station knows that it has simply gone from bad to worse. The typical situation is to have a maximum of five taxis to carry about 75 people, and I am thinking especially of the trains coming from Montreal.

Lately there has been a bus service, but it has no luggage facilities and people are crowded in like sardines. On top of that, if you are able to get a taxi or the bus, you have to wait at least 15 or 20 minutes, anyway. What can be done about it?

Mr. Neilly: I can only say that I would be very pleased to pass those comments on to the railways.

The Deputy Chairman: As a matter of fact, I have been through the same experience as Senator Fournier. Very often when I come up from Montreal I have to wait 15 or 20 minutes for a taxi. I believe that is the general experience. Senator Fournier and others have raised this question in the Senate, but nothing has ever been done about it. Before we pass any comments on to the railways, the

Senate should ask specific questions in order to find out what is wrong and who is to blame. In other words, the Senate itself should do this.

Senator Fournier (Madawaska-Restigouche): I agree.

Senator Buckwold: As I said yesterday, one of the most important factors in this whole question is the convenience of the public, but the truth is that the railroads don't give a damn. They really don't. At least up until the time of the energy crisis, the attitude of the railroads, with the possible partial exception of the CNR, has been to discourage passenger traffic. The railroads are just not interested in passenger traffic. For them passenger traffic is a loss-operation and a headache. They certainly have not gone out of their way to create facilities which would be convenient for the public.

Referring again to the Saskatoon situation, the station now is about five miles from downtown Saskatoon, and in that case the railroads really could not have cared less about the convenience of their passengers in getting downtown. To them, it was strictly a city operation to provide the public transit.

I must admit that I am not that concerned about the taxis. That is a problem which involves relatively few people. I am interested in public transportation for the mass of the people who come on a train and expect at low cost to be able in a public way to get at least downtown where they can connect with the overall system. Again, I have to emphasize that this is a most important aspect of making the whole thing work.

Senator Forsey: Hear, hear.

Mr. Neilly: If I may say something, one of the concepts of the bill is that there must be a transportation plan for the urban area, and there must be an urban development plan prepared for the urban area. Now, these plans will be prepared very much under the scrutiny of local authorities. Local authorities, both municipalities and the province, will have to agree on these plans. That is, all the municipalities and the province will have to agree on them before the commission can look at a project.

Senator Buckwold: Mr. Neilly, having all the nicest plans in the world does not necessarily mean that another department of the city authority will suddenly put buses on at a very significant loss. Planning in itself is not the answer. Obviously, the planning comes first, but the actual operation of the transportation facility itself is something that goes far beyond the planning stage. It is expensive, and it is a very heavy loss to the municipality to keep these services there. The municipalities may feel that as part of this plan they should be getting some financial compensation from other levels of government.

Senator McNamara: This is a supplementary question. Do I understand that the railways have some definite responsibility for providing transportation from the station to the downtown regions? Is there anything about that in the Railway Act? Or is it the point, that we would just like to see them provide this service?

Mr. Neilly: So far as I am aware, in the Railway Act there is nothing on transportation to or from a station. That is outside the Railway Act.

The Deputy Chairman: And there is nothing in the bill that would help?

Mr. Neilly: Only in so far as the plans might include rapid transit, say to the downtown core, if in fact the station were taken out. There is nothing in this that would permit the station to be removed without the consent of the local municipalities, and the province.

Senator Forsey: In fact, it would not necessarily be removed. It might be left in the centre and redeveloped, as it were.

Mr. Neilly: That is right.

Mr. Hibbard: The only portion of the Railway Act that I know of that covers that situation is that the location of the station must be approved by the CTC, and these locations have been approved. Now, if there were going to be a relocation of a station, I would imagine that that would carry on, that the relocation itself would include the location of the station, and it would require CTC approval.

Senator Forsey: I think, if I may intervene at this point, that the whole line of questioning that Senator Buckwold has been engaged in is likely to be of increasing importance, because it seems to me quite clear now that we are headed, because of pollution, because of the energy crisis, and so forth, back toward railway passenger transportation in certain fields, for the relatively short haul, and what is now an inconvenience to a relatively small number of people, shall we say—the kind of thing we have here in Ottawa—may become an inconvenience to a much larger number of people if the kind of development takes place that even transportation experts are now talking about.

Senator McElman: I realize this is not perhaps a principal area of discussion for this bill, but it is surely an interesting one. From my standpoint it is highly interesting.

The fears being expressed by some members of the committee are very real. As you have heard me say on previous occasions in the committee and in the house, I come from Fredericton, the only provincial capital in Canada which has no rail passenger service. It is an example of what the railways will do if they are permitted to get off with things. At a period in time when the municipality of Fredericton and the province had little whack with the railways, they had their own way, and the rail passenger service was totally discontinued to the city of Fredericton.

Senator Riley: With the approval of the CTC.

Senator McElman: That is right. There are buses available—

Senator Forsey: But not on Sundays.

Senator McElman: That is true.

The Deputy Chairman: Not on Sundays?

Senator McElman: That is right. If you wish to travel CP, which is the short route through Maine to Montreal, you board a bus, which is not a railway bus, and you travel some 27 miles to Fredericton Junction to get to the main line of the CP. If you wish to travel CN, through Canada, you travel some 25 to 30 miles in the other direction, to the main line of CN, at McGivney Junction, again by bus, or take your own car if you like. It is a disgraceful situation. There is absolutely no regard for people—none whatsoever.

Senator Forsey: If I may intervene, senator, on Sundays you have to take a taxi, and it costs you fifteen solid dollars to get from Fredericton to Fredericton Junction, if

you happen to want to take a train on Sunday night from Fredericton Junction to Montreal.

Senator Buckwold: What is a solid dollar these days?

Senator McElman: This is what the railways have been prepared to do, as Senator Riley said, with the approval of the CTC. A provincial capital is totally cut off.

Now, this bill is very welcome in Fredericton, as well as in New Brunswick. We have two cities in particular working for a long period of years for this very thing. Fredericton is one and Moncton is the other. Moncton has the main lines running through it. Fredericton does not have main lines. Saint John has had some negotiations, but not to the same degree as the other two cities. I have told you of the passenger service in Fredericton, but in the main part of town, which is the flat of Fredericton—the alluvial flat—where the main city is, we have as many as five lines, with main streets crossing those lines. To the ordinary resident of Fredericton, the CN and CP are nothing but a damned nuisance to traffic. The mayor of Fredericton, Mr. J. W. Bird, is the president, since the meeting a fortnight ago, of the Canadian Federation of Mayors and Municipalities, and has welcomed this bill in strong terms, as the city of Moncton has welcomed it. There will be dancing in the streets if they can get rid of the nuisance the railways are to the city of Fredericton, because that is about all they have been in recent years.

Senator Fournier (Madawaska-Restigouche): It is a shunting yard.

Senator McElman: It is a shunting yard, as Senator Fournier says. It is not only a nuisance, but we have not been able to get co-operation even in regard to separated level crossings. As one example of the many dangerous crossings within the municipality of Fredericton, we have a rather noted and notable university on "the hill", as it is called. The main shunting line of the joint railways runs within 50 yards of the main entrance to that university, thousands of students pass back and forth daily, but we have not got a rail separation even there. The railways have been noxious and obnoxious in the city of Fredericton. I have vented my wrath on that subject.

The sponsor of the bill, Senator Donald Cameron, expressed some concern that the railways under this bill might fall heir to a packet of money they would not be entitled to. Since the railway beds were initially Crown property, and conveyed to the railways, it was his thought, and I believe he had some support for it, that the rights of way should revert to the Crown, in these instances; but he did not have a legal opinion as to whether this could be accomplished or not. I understand there is a divergence of opinion as to whether it should revert. In most cases, I guess it would not. In any event, we have witnesses here who can give us examples of what will happen when action is taken in various parts of the country under this bill. Can they tell us whether the land will revert to the Crown, or whether it will remain the property of the railways in some very highly desirable locations in the municipalities involved? If there are cases where it would revert, would they tell us about those?

Mr. Neilly: The general position, as we understand it from the Department of Justice, is that, generally speaking, the railway land is the property of the railways, and this includes railway land granted by the federal government. This is not an invariable rule, but generally speaking it is the case. In order to determine precisely what the situation is with respect to any particular piece of right of way, there would have to be an examination of the railway charters and of the actual instruments of conveyance of the land. So it is not an easy job to answer your question with respect to any particular piece of property.

There is one qualification to this. Before 1903 the grants of land, that is to say, federal crown land, to railways, ordinarily carried with them rights over mines and minerals. After 1903 this was no longer true, unless the instrument of conveyance expressly said that rights over mines and minerals were included. There certainly are examples known of land that does revert to the Crown. For instance, in Winnipeg part of the main CPR yard, if not used for railway purposes, reverts to the Crown, but whether that is to the federal Crown or to the provincial Crown I do not know. There are reversionary rights with respect to part of that land.

This bill does not alter in any way the rights or the interests of the railways in any property. If there are reversionary rights, the bill does not touch them. If the railways own the property outright, it does not touch that. What the bill says is that the railways shall neither gain nor lose from one of these relocation projects.

Senator McElman: Then each of these cases will be considered on its own, depending upon the reversionary or other rights involved?

Mr. Neilly: That is right.

Senator McElman: And you have had legal opinion on this?

Mr. Neilly: Yes, both from the Department of Justice and from the legal department of the CTC.

Senator Forsey: Where does the title rest for the lines of the old Intercolonial? That presumably rests with the Crown in the Right of Canada, does it not?

Mr. Neilly: I believe that is true, but here I am speaking off the cuff.

Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel: That would be an interesting research project.

Senator McElman: Your reference to mining rights is very interesting, but I hope they don't have mining rights on their rail bed in the city of Fredericton.

Senator Blois: Mr. Chairman, I have a few questions to ask. I am not at all sure that the gentlemen present would be in a position to answer them. Perhaps they should be taken up directly with the Canadian National Railways. I shall give a brief history of the situation about which I want to ask some questions. I am speaking of the CN Railway station in the town of Truro in Nova Scotia. Some 60 years ago a very beautiful red stone building was erected there, because at that time it was quite a large railway centre. Then someone decided that the station was too large and certain repairs would be necessary. So it was decided to tear the old building down and put up a new railway station, somewhat similar to that in the city of Moncton. However, what has happened, and here I would like to find out why, is that some arrangements were made with the railway company whereby a provincial company of realters, mostly from Halifax, made a deal and bought the property and built there a large shopping centre. Many of the shops have been rented, but many have not, and in my opinion they never will be. There are no parking

facilities and it is at one end of the town. I am glad I have not invested any money in the deal.

The complaint is that the old station has been torn down, and now there is a small railroad station. When you get off the train, there is absolutely nothing to show you where to go. I went there by train myself a few weeks ago, and although Truro is my hometown, I found no signs to indicate whether to turn to the right or to the left. You find yourself walking up by solid walls and eventually you come to an open space. No one can tell whether the building is the railway station, a liquor commission store or something else. There is no sign to show where the station is, where to buy a ticket or how to get out on to the main street. There is no sign of any description. Everybody there is annoyed about it. I had a meeting with an official or somebody a few weeks ago. I would like to know who sold this property, how much they paid for it, and whether something can be done to make it decent for the travelling public.

Furthermore, there are many complaints that the trains stop as far away as they can so as to make it difficult for the passengers. When I got out of the train I did not know where to go, and I had to walk quite a long distance, and then I had to ask somebody, "How in the world do you get to the railway station?" This is a very serious situation and it is putting the Canadian National Railways in a very bad light with the public generally. So I would like to find out who gave consent for that old station to be torn down and the land to be sold or leased to a realty company to build a shopping centre, and can there be any improvement?

The Deputy Chairman: Is there anyone here who can answer that?

Mr. Neilly: I cannot throw any light on the details of that arrangement. To some extent, the use of railway property is under the direction of railway management, and there is no need for the railway to ask anyone's permission, but I am not saying that that is the situation here.

Senator Blois: Well, I think it is, and at any rate it is a mess and I would like to know why.

The Deputy Chairman: You have not taken up the matter with the vice-president? You may have a vice-president in Moncton, for that region. Did you discuss this with him?

Senator Blois: No, I did not.

The Deputy Chairman: Perhaps he could tell you about it, or the chairman of the committee could write to the CN and get the answer.

Senator Blois: I would like it very much if that could be done, because so many people have been asking me about it.

Senator McElman: The CTC would have had to approve of the location of the station, wouldn't they?

Mr. Neilly: But they didn't change the location, did they?

Senator Blois: No, it is practically in the same spot.

Mr. Neilly: So that did not involve a change of location.

Senator Blois: I might add that many of the tracks were torn up and some more are to be torn up. There is another serious situation, but it is one about which you probably would not know. Quite a large section of the town lies at the other side of the railway tracks and the understanding was that there would be a walkway crossing seven or nine tracks. That walkway is about 40 inches wide. Many school children have to cross by it, and when they get across they have to find their way out onto the main street. They showed me the situation. There is just a small passageway without any sign on it and without any windows of any kind, alghough I believe it is lighted at night. It is really a disgraceful situation.

The Deputy Chairman: The only way to settle this matter would be to write to the president of the CNR or to the vice-president of operations. We could get together and write such a letter.

Mr. Neilly: Mr. Chairman, may I say a word on that? This bill does change the definition of a railway crossing so that a pedestrian walkway is recognized as being eligible for assistance. That is in the same way as if it were a vehicle overpass or underpass, a grade separation, in other words.

Senator Blois: For years there was an overhead bridge, and for 35 years people had to cross these tracks as best they could. There was nothing to protect them.

Senator Buckwold: The only comment I have is I do not know how anyone could get lost in Truro.

Senator Blois: Well, you are used to big towns, so you just do not appreciate it. I will tell you that it is one of the very best towns in Canada. It is one of the few places that did not take any assistance in 1929 and the 1930s. The townspeople did not receive any government help, but financed themselves, and they still do. They should not get such a dirty deal as they get today.

Senator Buckwold: I wish to make it very clear that my remarks was facetious; I knew I would get a very warm response.

Senator Forsey: The substitution of this plastic affair for that fine old red stone is itself a disgrace; it is a blot on the landscape.

Senator Riley: Mr. Chairman, I am curious about Part III, clause 18(1), which reads as follows:

> There shall be continued in the accounts of Canada an account, which shall continue to be known as the "Railway Grade Crossing Fund".

I am not familiar with the present Railway Grade Crossing Fund. Where does that fund find its supply of funding?

Mr. Neilly: Appropriations are made in the regular manner through the estimates and appropriation acts.

Senator Riley: Were many of the grade separations constructed in the past assisted by the fund?

Mr. Neilly: Yes; the Railway Grade Crossing Fund has existed since 1909 and millions of dollars have been contributed over the years to assist in the construction and reconstruction of grade separations.

Senator Riley: That is to assist the railways?

Mr. Neilly: It is actually to assist the construction. The railways have also contributed to the cost of these. They have been relatively small amounts. There are three parties to all projects under Part III—the highway authority, the railway and the Railway Grade Crossing Fund. The Railway Grade Crossing Fund may pay up to 80 per cent, under certain limits, for a new separation.

Senator Riley: Presently, or under the new section?

Mr. Neilly: The old provisions were for 80 per cent, to a maximum of $500,000, for construction. The new provision is for 80 per cent, or $1 million, for construction. For reconstruction, the old provision was 50 per cent, or $250,000 and the new provision is for 50 per cent, up to a maximum of $625,000. The dollar limits have been more than doubled for projects under the Railway Grade Crossing Fund. In addition to that, in Part II we have provided special grants for very expensive grade separations, which would be much in excess of the amounts presently authorized.

Senator Riley: I would now like to refer to clause 20(1) (a), (b), (c) and (d). My first question is in relation to paragraph (a) which reads:

> (a) work actually done for the protection, safety and convenience of the public in respect of existing railway crossings at rail level;

Does this provide for moneys additional to the present allocations?

Mr. Neilly: This is just the general formula under which the Commission has control of certain funds to assist in the construction or re-construction of grade separations. It simply repeats the language now contained in the Railway Act.

Senator Riley: Does this also apply to paragraphs (b), (c) and (d)?

Mr. Neilly: One minor addition is that paragraph (d) provides for placing revolving lights on locomotives.

Senator Riley: Why would that be added? Is that not the responsibility of the railway company? Why should moneys be extracted from the Consolidated Revenue Fund, or whatever the source is, in order to place revolving lights on locomotives? They are necessary to keep game off the tracks and to give a better signal to the public that the train is approaching at night, butI fail to understand why the government should contribute to or pay most of the costs of installing them.

Mr. Hibbard: At the present time the fund contributes to automatic crossing protection, that is, the flashing lights and the gates.

Senator Riley: I understand that.

Mr. Hibbard: It also contributes to the placing of reflective markings on the sides of cars. It was felt that the revolving lights, which would be actuated only as the locomotive approaches a crossing, would be an added warning to highway traffic.

Senator Riley: Many trains going through wooded areas now use the revolving light so that game will not be attracted to the big, fixed light on the locomotive, do they not?

Mr. Hibbard: Yes. This would be a different type of light. It would be a flashing type, similar to those used on police cars and ambulances.

Mr. Hopkins: It would be to warn people?

Mr. Hibbard: Yes, it would be to warn people.

Mr. Hopkins: Not animals?

Mr. Hibbard: Yes.

Senator Fournier (Madawaska-Restigouche): Those revolving lights are very effective in the wooded areas and no one who takes a ride in a locomotive at night can argue that they are not effective, as one can see what takes place sometimes without them. That is why I would say they are very effective.

Mr. Hibbard: It was felt that this would be an added safety element at crossings and would attract the attention of motorists.

Senator Fournier (Madawaska-Restigouche): I agree with that.

Senator Riley: I believe Senator Fournier refers to the type of light I spoke of, not the flashing light?

Senator Fournier (Madawaska-Restigouche): Yes.

Senator Riley: I spoke of a light that revolves, so that animals are not transfixed by a steady beam. It has been of great benefit to the railway operating into Edmundston in particular. I do not know if a day-liner still runs from Woodstock?

Senator Fournier (Madawaska-Restigouche): No.

Senator Buckwold: Mr. Chairman, perhaps we could return to the actual legislation in a direct manner, without in any way minimizing any of these other important issues? I am very much concerned about the fund. Although the amounts seem to be very generous, they bring us back to the costs prevailing 10 or 12 years ago, when the limits did not allow sufficient funding. The proposal is very generous in raising the amount to $1 million, I gather, from $500,000, but if $500,000 was not sufficient 10 years ago, the $1 million does not put the municipality in any better position now that it was under the previous provisions. I know you move into special allocations, but under them, in my understanding, you only pay the maximum of 50 per cent, whereas in the other part you pay 80 per cent.

Mr. Neilly: The formula under Part II with respect to very expensive grade separations is that 80 per cent of the first $1.25 million is paid, which is the same as under the Railway Grade Crossing Fund. For the next $3.75 million, that is to a total cost of $5 million, 60 per cent is paid; and over $5 million the federal government will pay 40 per cent. So there is a sliding scale, an escalation scale.

Senator Buckwold: I am aware of this. All I am suggesting is that your department very quickly should consider raising the level of the 80 per cent amount to enable municipalities to do the work required with the minimum of financial burden. In view of the tremendous escalation in costs since the bill was written and these figures determined, there should be early consideration of increased amounts in order to help municipalities and encourage development of these funds. The grade fund pays 80 per cent, and the railroads pay probably 7 per cent.

Mr. Neilly: Five per cent.

Senator Buckwold: Five per cent or 7 per cent, and the municipality picks up the rest. That is not too difficult. But when you get into the more expensive ones—and they are all expensive today, other than the little crossings—the difference in the percentage puts a very heavy load on the municipality. The railroads' share, I presume, does not go

up; it is the municipality that picks up the higher percentage.

Mr. Neilly: There is provision in Part II for the Canadian Transport Commission to decide what portions shall be paid by the other parties. No rules are laid down for this. It is left to the commission. It is unavoidable that the municipality would have to pay a higher percentage, once you move beyond the $1.25 million where the 80 per cent applies.

Senator Buckwold: The upper limits, in my opinion, are not high enough in the light of the very inflationary costs which are now being experienced, compared with the former levels.

Mr. Neilly: We have had many discussions with the Department of Finance and with the Treasury Board, and all I can say is that this is as much as we could obtain.

Senator Buckwold: I am sure the municipalities will be knocking on your door, saying, "Look, for $1 million today we cannot do as much as we could 10 years ago."

Senator Forsey: It is just catching up.

Mr. Hibbard: During the past year and a half, I have had a number of discussions with provincial highway departments and municipalities regarding grade separations, and I feel sure they will certainly welcome this increase from $500,000 to $1 million. In the majority of cases, the cost of grade separations does not exceed the figure of $1,250,000; so really they would be getting 80 per cent. In cases where it does exceed that amount, they receive additional assistance, under part II, in the form of a special grant. I feel sure they will be very happy with this increase.

Senator Buckwold: Temporarily.

Mr. Hibbard: It is hard to say where inflation will go.

Senator Forsey: So far so good.

Mr. Ryan: I do not think anyone has yet thought of indexing it.

Senator Riley: What are the latest available statistics with respect to accidents generally, or accidents resulting in death, which have occurred at level crossings?

Mr. Hibbard: I do not have the figures here.

Senator Riley: Give us a windshield estimate.

Mr. Hibbard: I cannot give the number, but from a graph, I can illustrate it this way: In 1957 the number of casualties at railway crossings and the number of vehicular accidents on the highway were approximately the same. Since that time, the number of railway crossing accidents has been fairly constant—in fact, it has decreased slightly—whereas the number of highway accidents has increased tremendously.

From that graph, it is our view that the assistance provided from the Railway Grade Crossing Fund toward protection at crossings has been well worthwhile.

Mr. Ryan: I do not mind giving you the graph, if it would help.

Senator Riley: What is the role of the CTC with respect to improvement of safety devices at level crossings? Does the CTC wait until a municipality, province or individual complains, or do they keep a watchful eye on the situation? Have the authority to issue directives to the railways to improve safety signalling devices, and so on?

Mr. Hibbard: Yes. They handle it in both ways. Generally, the CTC acts upon complaints. We do not have the staff to police crossings. When we receive an application or a complaint, we take immediate action. We have a site investigation, the matter is discussed by all parties, and improvements which can be made are ordered.

Senator Riley: I presume that the CTC keeps a statistical record of level crossing accidents each year?

Mr. Hibbard: We do.

Senator Riley: If they find there is an increasing number of level crossing accidents, do they step in and say to the railroad concerned, "It looks as though there is some deficiency in the warning signal system at crossing A or crossing B. We want you to present a plan for the improvement of this."

Mr. Hibbard: Yes, it does that. When there are serious accidents at level crossings, action is usually taken immediately by the CTC on its own initiative. There have been recent hearings on level crossing accidents.

Senator Fournier (Madawaska-Restigouche): Is it not the policy of the department to wait until there is an accident before taking action?

Mr. Hibbard: No. There are, of course, hazards at all level crossings, even those that are protected. We endeavour to take action where we know that serious hazards exist. As I said, we do not have the staff to examine in detail every level crossing every year.

Senator Fournier (Madawaska-Restigouche): When I was a member of the House of Commons, I made application with regard to two dangerous crossings. Both letters in reply indicated that there was no evidence of accidents. When someone was killed, we got action, but it took an accident to get some action.

The Deputy Chairman: Unfortunately, that is often the case. People wait until an accident occurs before taking action. The commission should take the initiative.

Mr. Hibbard: We have evidence of numerous accidents occurring at level crossings which are protected with automatic crossing lights and even gates.

Senator Fournier (Madawaska-Restigouche): But that does not justify a request being made by someone who lives in the area and knows what is taking place every day? There is not much that you can do until someone pays the ultimate high price?

Mr. Hibbard: All I can say in reply is that we generally take action to investigate complaints at the site.

Senator Fournier (Madawaska-Restigouche): I have no argument with you in that respect.

Mr. Neilly: If I may add a word, Mr. Chairman, there are 35,000 highway railway crossings in Canada, of which only about 6,000 are protected either by grade separation, gates or lights. When I say "protected," I mean something beyond the familiar crossbuck sign which is at all railway

level crossings. It is quite a problem to spread the money that is available over all crossings and to select those which are going to have the added protection. The cost of having grade separation or gates at all railway crossings would, of course, be extremely high. Even for minimum protection such as lights, the cost would be extremely high.

Senator Riley: I have a question for Mr. Hibbard, Mr. Chairman. I want to preface it by saying that I understand a directive was issued by the CTC to the CNR earlier this year, in respect of the increased number of derailments in the province of New Brunswick. What action has been taken in respect of that directive?

Mr. Hibbard: There was a public hearing two years ago with regard to the safety of operations on the railways. A report was issued as a result of that hearing, in which the railways were requested to take certain action and to submit a report on the action they proposed to take. That report has just come in, I understand, and the CTC has formed a Railway Safety Advisory Committee which consists of representatives of the CTC, the two major railways, The Railway Association and labour. That committee is presently looking into the matter of derailments.

Senator Riley: At the risk of being insular, I should like to direct your attention back to the derailments which occurred in New Brunswick. I believe I read somewhere that the CTC issued a directive to the CNR in respect of those derailments. What the wording of that directive was, I do not know, but I presume it was that the CNR should keep a closer watch on the roadbed and the rails. I understand that it is not only the roadbed and the rails that are at fault in these derailments, but also that close inspection is not kept on these flaggings, or whatever they are called, that go out on the hotboxes, and so forth.

Mr. Hibbard: The inspection of trains and cars.

Senator Riley: Yes, inspection of the wheels on the cars, or wherever this device is which can become overheated.

Mr. Hibbard: I am not aware of any specific directive in that regard, senator. I do know that this whole matter is going to be under study by the advisory committee. That study will not only take into account Maintenance of Way defects, but also operational and equipment defects.

Senator Riley: While this study is under way, we will continue to have derailments.

Mr. Hibbard: In individual case these matters have been investigated and the railways ordered to correct the situation. I am familiar with some accidents that occurred down East where we found defective construction of culverts. As a result of our investigations, the railways were requested to correct those situations. They did not have to be ordered, because when these defects were pointed out to them, they agreed to carry out the necessary alterations.

Senator Fournier (Madawaska-Restigouche): Without going into a long history, in my days a section of some six to eight miles was looked after by a four-man gang working every day, shimming the roadbed, and things like that. Today the sections have been increased from six to eight miles in length to some 35 to 40 miles in length. At the same time, the work gang has been reduced to three men, and that gang drives along the road in a car. How can we expect these men to keep close inspection on the roadbeds and rails when they are driving in a car from one crossing to the other? All they do is clean the crossings. True enough, there is a patrol motorcar operated by a man they call the road master who travels along three or four sections a day and reports his findings.

I know of one derailment in New Brunswick not too long ago which resulted in damage in the vicinity of $1 million. That derailment could have been avoided if the patrolman had been on the rails and had inspected the track on time. How can you justify having three men driving in a car on the highway supposedly keeping a close watch on the roadbed for defects?

Senator Riley: The number of inspections has also been reduced.

Senator Fournier (Madawaska-Restigouche): Well, the work gangs have gone from four men inspecting a section of between six to eight miles to three men responsible for inspecting a section of 35 to 40 miles, and the crews today, travel in a car along the highway.

Senator Riley: These men are equiped to repair defects on the spot, are they not?

Senator Fournier (Madawaska-Restigouche): There is another gang which travels by truck, and if a hotbox is burnt out, the boxcar is put on a siding and that truck finds its way to the siding and changes the box.

That is very poor service, as far as I am concerned. One does not have to look very far to find the cause of all these wrecks.

Mr. Hibbard: I think those remarks quite true. The railways, are managing the railways system, not the CTC. The manner of maintenance on the railway systems has changed considerably over the last 25 years. I am not putting this forward as an excuse on behalf of the railways, but rather just to outline what has taken place. Previously, the railways had short sections with a number of men to carry out inspections on those sections. The labour at that time was, for the most part, hand labour. Today we use machines. We have changed from short sections inspected by large numbers of men to longer sections, with the bulk of the maintenance carried out by large mechanized gangs. In this way, the railways feel they can justify the changes.

It is quite true that more accidents are happening today due to track defects than was the case even three years ago. For that reason, the CTC is looking into this matter very carefully. They are looking into this matter of the sections being maintained in the manner they are, and the fact that the number of men for inspection has been reduced. They are certainly studying the manner of these inspections.

Senator Fournier (Madawaska-Restigouche): I do not want to get into an argument with Mr. Hibbard. I agree with what he have said. I would just like to say that at one time in the spring when the ground was frozen you could walk along a railroad track and see little stretches where shim was used to maintain an even roadbed. Today you do not see shims anymore. All you see is a big hole, and a train travelling at 50 to 70 miles an hour just leaves the track and disappears into a mudhole.

Mr. Hibbard: I certainly agree that that does happen.

Senator Fournier (Madawaska-Restigouche): There is no more shimming now on the railroad.

Mr. Hibbard: What we have found the railways generally doing, where these conditions occur, is reducing speed instead of shimming.

Senator Fournier (Madawaska-Restigouche): That makes me laugh.

Senator Buckwold: Mr. Chairman, we have probably reached a stage where you might be prepared to accept a motion to report the bill, otherwise I presume we would have all kinds of comments to make. Does anybody ever have a good word to say for the railroads? I think there is the odd thing that they do very well.

Senator Fournier (Madawaska-Restigouche): I agree with that.

Senator Riley: Has the CPR acquired, either by lease or by transfer of title, the roadbed extending from the New Brunswick border to the Quebec border through Maine?

Mr. Hibbard: I believe they are negotiating. I cannot tell you whether the negotiations have been completed, but they are negotiating for part of it.

Senator Riley: I understood there was some move being made in that direction, because up until now they have been contributing to the upkeep of the roadbed, although they did not have the responsibility of control of upgrading, maintenance or proper repairs to the roadbed.

Mr. Hibbard: That is right. I believe they are charged on what they call a wheelage basis. As they have most of the trains, they are assessed most of the cost. Not too long ago, so I understood, negotiations were under way for purchasing a part of that mileage. I am afraid I cannot say what mileage is involved, but there is a portion there for which they are negotiating. I cannot say whether the negotiations have been completed or not.

Senator McElman: There was a press account on this within the past three weeks, which reported that CP already had a part of the mileage through Maine, either by long term lease or by purchase arrangement of the past, that it had just concluded its negotiations and that they were ready to complete the whole transaction. It was reported that the negotiation for the rest of the mileage in Maine had been completed. As I say, it was a press account, but none the less that was the report.

Perhaps I could add this, to support Senator Riley's reference to accidents. I think he was speaking principally of the CN main line from Halifax through Moncton and on through New Brunswick to Quebec. There has been a very restive feeling among railway workers who are running the trains on that line; they have been very concerned. There have been some letters written to newspaper editors by employees running these trains—letters to which they did not sign their names, for very obvious reasons—referring to the poor condition of the roadbed. There was, perhaps not a directive from the CTC, but at least a statement, that the roadbed in that area had been permitted to deteriorate, or that it was not up to the quality it should be. The principal officer of the CNR in the Moncton area made an angry statement that this just was not so, that it was a misrepresentation, or words to that effect. A very short time after he made his statement, there were two extremely bad accidents in the same area of line, which proved very costly to the CN railway. There were no further statements from the CN official in Moncton, but there are still statements in private letters from railway employees saying that they are still extremely unhappy. I understand that in recent weeks there has been considerably more maintenance activity on that section of line about which Senator Riley was expressing concern.

Senator Riley: It was fortuitous that they were freight trains that were derailed, otherwise there might have been some fatalities.

Senator Fournier (Madawaska-Restigouche): The "Ocean Limited" was derailed at Rivière du Loup.

Senator Riley: Yes. I was thinking of the accident in New Brunswick, on the main line there.

The Deputy Chairman: Are there any more questions? If not, I would like to thank these gentlemen for helping us. I thank you, honourable senators.

Senator Buckwold: I, too, would like to thank these distinguished gentlemen for answering all these questions.

Senator McElman: And for their patience.

The Deputy Chairman: Honourable senators, is it agreed that we report the bill, without amendment.

Hon. Senators: Agreed.

The Committee adjourned.

Published under authority of the Senate by the Queen's Printer for Canada

Available from Information Canada, Ottawa, Canada.

CA1 YC 17
-T52

Government
Publications

Second Session—Twenty-Ninth Parliament
1974

THE SENATE OF CANADA

STANDING SENATE COMMITTEE
ON

TRANSPORT AND COMMUNICATIONS

The Honourable J. CAMPBELL HAIG, *Chairman*

LIBRARY
NOV
UNIVERSITY OF TORONTO

LM0.61

INDEX

OF PROCEEDINGS

(Issues Nos. 1 to 5 inclusive)

27718—1

Prepared
by the
Reference Branch,
LIBRARY OF PARLIAMENT.

Standing Senate Committee on Transport and Communications
2nd Session, 29th Parliament, 1974

INDEX

Air Canada
Aircraft
Construction 4:37, 38-9
DC-8 4:24, 30-1
DC-9, regular, extended 4:22, 24
Depreciation 4:30-1
Leased 4:31
Progress payments 4:27-8
Selling 4:38
Viscount, phase-out 4:22
Air Jamaica, relationship 4:31, 34-5
Airports, new, necessity 4:21
Air Transit Ltd. (STOL), subsidiary 4:34-5
Baggage handling, comparison 4:32, 36-8
Banks, indebtedness 4:27-8, 32
Bill C-5, necessity 4:27, 32
CAE Company, service 4:31, 36
Canadair, proposed purchase 4:38
Capital, working, deterioration 4:27
CNR, relationship 4:15, 18
DeHavilland Aircraft of Canada Ltd., proposed purchase 4:38
Dividends 4:27, 38
Eastern Provincial Airlines (EPA), relations 4:30
Fares, comparison 4:32
Financial statements, 1973 4:51-4
Financing and Guarantee Act, necessity 4:27, 32
Flights
Chartered 4:31-2
Direct service 4:26
First class, economy 4:22-4
Frequency 4:25
Scheduling 4:30
Government investment 4:38
Income Tax, deferred 4:27
Maintenance 4:25, 35-6
Operating revenues 4:29
Priority system 4:28
Public accounts, tabling, 1973 3:14-5
Reservations
Neglect, penalize 4:29
Telephone service 4:24-5, 29
Rolls Royce Engines, purchase 4:34
Security checks 4:32-3
Serving schedule 4:24
Shuttle services 4:25
Stop-over charge 4:26, 29, 33-4
Thompson Commission, maintenance recommendations 4:35
Toronto Terminal 2 4:26-7
Traffic, increase 4:30

Air Transit Ltd.
See
Air Canada

Asselin, Hon. Martial, Senator (Stadacona)
Bill C-5 4:26, 28, 35

Automobiles
Fatalities, summary 2:6-7
Manufactured, imported, number 2:7-8

Automobiles—Tires
After-market 1:6, 9
Cost increase 2:14-5
Legislation, foreign, comparable 1:5-6
National Tire Safety Mark 1:10-1; 2:12
Recall system 2:10, 12-7
Retailing 1:8
Retreaded 1:6, 2:11, 17-9
Sold per year, number 2:8
Standards 1:5; 2:10-1, 19
Studded 1:7, 10
Testing 2:9
Traffic accidents, tire failure 1:6, 9; 2:9
Tread wear, pattern 2:10, 19
Two-ply, four-ply 2:18
See also
Bill S-3, Motor Vehicle Tire Safety Act
Canadian Standards Association

Benidickson, Hon. William, Senator (Kenora-Rainy River)
Bill C-5 3:5-8, 11, 13-8; 4:8, 13-4, 16-9, 35-8
Bill S-3 1:10

Bill C-5, Canadian National Railways Financing and Guarantee Act, 1973
Discussion
Clause 13—Continuing application R.S. 1952 3:10, 17-8
Clause 14—Auditors 3:13, 15
Necessity 4:14
Purpose 3:6, 9, 12-3
Reported to Senate without amendment 4:5
Statement 3:9-10, 13
See also
Canadian National Railways

Bill C-27, Railway Relocation and Crossing Act
Canadian Federation of Mayors and Municipalities, support 5:7, 9
Discussion
Clause 18(1)—Railway Grade Crossing Fund 5:10-1
Clause 20(1)—How Fund may be applied 5:11
Reported to Senate without amendment 5:4
See also
Canadian National Railways

Bill S-3, Motor Vehicle Tire Safety Act
Application 1:6; 2:13
Discussion
Clause 2—Definitions 2:10-1
Clause 3—National Trade Mark 2:12
Clause 4(1)—Regulations respecting use . . . national tire safety mark 2:10, 12, 16-7

Clause 5—Prohibitions applicable manufacturer or distributor 1:11
Clause 6—Export and Interprovincial shipments 1:8
Clause 7—Importation of Motor Vehicles Tires 1:8; 2:12
Clause 8—Notice of Defects 2:12-3, 16
Jurisdiction, federal, provincial 1:6-7
Legislation, enabling, complementary 1:8-9; 2:9
Necessity 1:9-10
Purpose 1:5-8, 10; 2:8
Reported to Senate without amendment 2:4
Support 2:8, 10

See also

Automobile-Tires

Blois, Hon. Frederick M., Senator (Colchester-Hants)

Bill C-27 5:9-10

Bourget, Hon. Maurice, Senator (The Laurentides), Committee Deputy Chairman

Bill C-5 3:5-18; 4:7-8, 15-22, 26, 31, 33, 35-6, 38-40
Bill C-27 5:6-8, 10, 12, 14
Bill S-3 1:6-7

Buckwold, Hon. Sidney, Senator (Saskatoon)

Bill C-27 5:6-12, 14

CNR

See
Canadian National Railways

CNTL

See
Canadian National Transport Ltd.

CPR

See
Canadian Pacific Railway

CSA

See
Canadian Standards Association

CTC

See
Canadian Transport Commission

Cameron, Hon. Donald, Senator (Banff)

Bill C-5 4:11, 20-2, 24-6, 38

Campbell, Dr. G. D., Director, Road and Motor Vehicle Traffic Safety Branch, Transport Dept.

Bill S-3
Discussion 2:9, 14-9
Statement 2:6-9

Canada Safety Council

Bill S-3, support 1:5
Functions 1:5

Canadian National Railways

Air Canada, relationship 4:15, 18
Annual report 4:12-3
1952 4:45-6
1973 3:7-8, 12
Auditing 3:14
Authority, decentralization 4:15-6
Branch lines, financing 3:18
Capital investment, government 4:50
CN Express, relations 3:12-3
Debentures, bonds 3:10-2
Expenditures, capital 4:13-5
Financial statements 3:7-8, 17; 4:42-4
Financing opportunities 4:13
Grain industry
Elevators 4:21
Problems 1972-73 4:19-20
Hotel business, expansion 4:16
Labour problem, 1973, negotiations 4:7, 11
Operating income, net, gross profit, 1973 4:7
Payments, government, 1972-73 4:17
Preferred stock 3:10, 17-8; 4:15, 17, 47, 50
Refunding securities 3:9; 4:15, 48-9
Rolling stock, boxcars
Atlantic region 4:18
Grain service 4:19-21
Saskatoon, railway relocation 5:6, 8
Shareholders' equity 4:50
Standing derailments 4:22
Statutes, consolidation 4:14
Surpluses, deficits 4:11, 18, 47
Tabulation, new monies 4:50
Telecommunications, growth 4:7
Traffic demand 4:7-8, 12
Trains, light, rapid 4:21-2
Rapido 4:21
Turbo 4:22
Trucking, Prairie provinces 4:11
Truro, N.S., station 5:9-10

See also

Bill C-5
Bill C-27
Canadian National Transportation Ltd.
Canadian Pacific Railway
Capital Revision Act, 1952
Railways
Railway Act

Canadian National Railways Financing and Guarantee Act, 1973

See
Bill C-5

Canadian National Transportation Ltd.

Assets 4:9-11
Balance Sheet, Dec. 31, 1973 4:8, 41
CNR, relations 3:12-4
Eastern Transport 4:9-10
Licensing, provinces 4:10
Operating policy 4:8-9
Retained earnings 4:18
Subsidies 4:10

See also

Canadian National Railways

Canadian Pacific Railway

Maine roadbed, acquisition 5:14
Payments, government, 1973 4:17

Canadian Standards Association
Automobile tires
Inspection, maintenance 1:6, 9
Proper application 1:6
Committee on Automobile Tire Standards 1:5

Canadian Transport Commission
See
Railways

Capital Revision Act, 1952
Preferred stock
Government holdings 4:17, 47, 50
Increase 3:10, 17-8
Purpose 3:17

Clarke, Charles E., Vice-President and General Counsel, Goodyear Tire and Rubber Company of Canada Ltd.
Bill S-3 2:12-3, 16, 19

Cochrane, Michael, Vice-President, Finance, Air Canada
Bill C-5 4:27-38

Cooper, G. M., General Counsel, Canadian National Railways
Bill C-5 3:9-18; 4:33

Corner, W. R., Vice-President, Accounting, Canadian National Railways
Bill C-5 3:8-18; 4:9-11, 18

De Havilland Aircraft of Canada Ltd.
See
Air Canada

Denis, Hon. Azellus, Senator (LaSalle)
Bill C-5 3:9
Bill S-3 1:7

Desruisseaux, Hon. Paul, Senator (Wellington)
Bill C-5 3:7-10, 14, 16; 4:34-6, 38

Farmer, P. J., Executive Director, Canada Safety Council
Bill S-3
Discussion 1:6-11
Statement 1:5

Financing and Guarantee Act
See
Bill C-5, Canadian National Railways Financing and Guarantee Act, 1973

Flynn, Hon. Jacques, Senator (Rougemont)
Bill C-5 3:5, 8, 15-8; 4:11-2
Bill S-3 2:12, 16-9

Forsey, Hon. Eugene A., Senator (Nepean)
Bill C-5 4:12, 17, 36, 39
Bill C-27 5:7-10, 12
Bill S-3 1:7-8, 10-1

Foster, M. B., Director, Government Finance, Finance Dept.
Bill C-5 3:15-6

Fournier, Hon. Edgar E., Senator (Madawaska-Restigouche)
Bill C-5 4:39
Bill C-27 5:7-9, 11-4

Gélinas, Hon. Louis P., Senator (Montarville)
Bill C-5 4:29

Goudie, Jack J., Technical Manager, Firestone Tire and Rubber Company of Canada Ltd.
Bill S-3 2:10-4, 18-9

Graham, Hon. Alasdair, Senator (The Highlands)
Bill C-5 4:15-6, 29-30

Gray, J. T., Senior Ministry Executive, Legal Branch, Transport Dept.
Bill S-3 2:16

Graydon, Kenneth R., President, Rubber Association of Canada
Bill S-3 2:9-13, 19

Grosart, Hon. Allister, Senator (Pickering)
Bill C-5 4:12-5, 17-20, 22, 26-8, 32

Haig, Hon. J. Campbell, Senator (River Heights), Committee Chairman
Bill S-3 1:5, 7, 9-11; 2:6, 9-13, 18-20

Hibbard, A. G., Acting Director, Engineering, Canadian Transport Commission
Bill C-27 5:7-8, 11-4

Hopkins, E. Russell, Law Clerk and Parliamentary Counsel
Bill C-5 3:11; 4:14, 20, 23, 26, 39-40
Bill C-27 5:9-11
Bill S-3 1:7-11

Langlois, Hon. Léopold, Senator (Grandville)
Bill C-5 3:7-9, 12-3, 17-8; 4:8, 10-2, 14-6, 18-20, 22-3, 26-8, 31-7, 39-40
Bill S-3 2:19

McElman, Hon. Charles, Senator (Nashwaak Valley)
Bill C-5 3:16; 4:12, 18, 22-3, 29, 33-4, 37-9
Bill C-27 5:8-10, 14
Bill S-3 1:10-1; 2:6, 15-7, 19

MacMillan, M. J., President, Canadian National Railways
Bill C-5
Discussion 4:8-22
Statement 4:7-8

McNamara, Hon. William, Senator (Winnipeg)
Bill C-27 5:8

MacNeill, H. Gordon, President, Goodyear Tire and Rubber Company of Canada Ltd.
Bill S-3 2:14-7

Martin, Hon. Paul, Senator (Windsor-Walkerville)
Bill C-5 4:24

Molgat, Hon. Gildas, Senator (Ste. Rose)
Bill C-5 4:19-20

Molson, Hon. Hartland de M., Senator (Alma)
Bill C-5 4:23-4, 30-2

Moore, J. Doran, President, Firestone Tire and Rubber Company of Canada Ltd.
Bill S-3 2:15-9

Motor Vehicles
See
Automobiles

Motor Vehicle Safety Act
Application, standards 2:7-8
Regulation
Federal 1:7
Tire, existing 2:9, 12
Transport Dept., safety standards 2:7

Motor Vehicle Tire Safety Act
See
Bill S-3

Neilly, Homer B., Policy Adviser, Surface Transportation, Transport Dept.
Bill C-27 5:6-13

Neiman, Hon. Joan, Senator (Peel)
Bill S-3 1:7-11; 2:12-4, 19

Railway Act
Grade separations, re-construction 5:11
Transportation to, from, station 5:8

Railway Relocation and Crossing Act
See
Bill C-27

Railways
Canadian Transport Commission
Railway Safety Advisory Committee 5:13
Safety devices, investigations 5:12-3
Station approval 5:8, 10
Derailments, N.B. 5:13-4
Fredericton, university crossings, need 5:9
Level crossing fatalities 5:12
Maintenance 5:13-4
Ottawa Station, taxi, bus service 5:7-8
Passenger service
Attitude 5:8
Fredericton 5:8-9
Railway Grade Crossing Fund, increase 5:7, 10-2
Rapid Transit, assistance 5:6, 8
Relocation, lines
Capital cost 5:6
Ownership, rights-of-way land 5:6, 7, 9
Provinces, discussion 5:7
Transportation plan, urban 5:8
See
Canadian National Railways

Riley, Hon. Daniel, Senator (Saint John)
Bill C-5 3:5-6, 10-4, 16-7; 4:8-10, 18, 21, 23, 28, 36-40
Bill C-27 5:8, 10-4
Bill S-3 2:11, 14-5, 17-9

Road safety programs
Expenditures, total 2:7

Ryan, D. F., Director General, Development Urban Affairs Dept.
Bill C-27 5:6-7, 12

STOL
See
Air Canada. Air Transit Ltd.

Smith, Hon. Donald, Senator (Queens-Shelburne)
Bill C-5 4:8, 28-9, 34

Sparrow, Hon. Herbert O., Senator (The Battlefords)
Bill C-5 3:9, 11, 15-6

Taylor, Claude I., Vice-President, Public Affairs, Air Canada
Bill C-5 3:14-5; 4:22-38

Tires
See
Automobiles—Tires

Transport and Communications Standing Senate Committee
Procedure 3:5-9
Recommendation improve financing CNR 4:5, 39-40
Reports 2:5; 4:6; 5:5
Unaudited statements, availability 3:15-7

Transport Department
Airport security checks 4:32-3
Motor Vehicle Program 2:7
Road Safety Program 2:7
Applied research 2:8
Toronto Terminal 2 4:26-7

van Roggen, Hon. George, Senator (Vancouver-Point-Grey)
Bill S-3 1:5-6, 8-9, 11; 2:8-9, 11-5, 17

Appendices
A—Canadian National Transportation Ltd., Balance Sheet, Dec. 31, 1973 . . . Canadian National Transportation, Ltd. 4:4, 8, 41
B—Canadian National Railways Interim Financial Statements—1973 4:4, 42-4
C—Canadian National Railways—Annual Report, 1952, Consolidated Balance Sheet, Dec. 31, 1952 4:4, 16-8, 45-6
D—Canadian National Railways Issues of 4% Preferred Stock 1952-73 4:4, 47
E—Canadian National Railways List of Surpluses and Deficits 4:4, 47
F—Summary of the Refundings under Canadian National Railways Refunding Act 1955 4:4, 18, 48-9
G—Canadian National Railways Shareholders' Equity 4:4, 50

H—Capital investment Government of Canada in Canadian Government Railways 4:4, 50

I—Tabulation of new monies authorized under Financing and Guarantee Acts for CN's Capital Requirements 4:4, 50

J—Air Canada, 1973 Financial Statements 4:5, 51-4

Witnesses

—Campbell, Dr. G. D., Director, Road and Motor Vehicle Traffic Safety Branch, Transport Dept.

—Clarke, Charles E., Vice-President and General Counsel, Goodyear Tire and Rubber Company of Canada Ltd.

—Cochrane, Michael, Vice-President, Finance, Air Canada

—Cooper, G. M., General Counsel, Canadian National Railways

—Corner, W. R., Vice-President, Accounting, Canadian National Railways

—Farmer, P. J., Executive Director, Canada Safety Council

—Foster, M. B., Director, Government Finance, Finance Dept.

—Goudie, Jack J., Technical Manager, Firestone Tire and Rubber Company of Canada Ltd.

—Gray, J. T., Senior Ministry Executive, Legal Branch, Transport Dept.

—Graydon, Kenneth R., President, Rubber Association of Canada

—Hibbard, A. G., Acting Director, Enginering, Canadian Transport Commission

—MacMillan, M. J., President, Canadian National Railways

—MacNeill, H. Gordon, President, Goodyear Tire and Rubber Company of Canada Ltd.

—Moore, J. Doran, President, Firestone Tire and Rubber Company of Canada Ltd.

—Neilly, Homer B., Policy Adviser, Surface Transportation, Transport Dept.

—Ryan, D. F., Director General, Development, Urban Affairs Dept.

—Taylor, Claude I., Vice-President, Public Affairs, Air Canada

For pagination *see* Index in alphabetical order

Published under authority of the Senate by the Queen's Printer for Canada

Available from Information Canada, Ottawa, Canada

CA1 YC 14
-T74

Government Publications

FIRST SESSION—THIRTIETH PARLIAMENT
1974

THE SENATE OF CANADA

PROCEEDINGS OF THE

STANDING SENATE COMMITTEE ON

TRANSPORT AND COMMUNICATIONS

The Honourable J. CAMPBELL HAIG, *Chairman*

LIBRARY
NOV
UNIVERSITY OF TORONTO

Issue No. 1

THURSDAY, OCTOBER 24, 1974

Complete Proceedings on Bill S-11, intituled:

"An Act respecting British Columbia Telephone Company"

REPORT OF THE COMMITTEE

(Witnesses: See Minutes of Proceedings)

28214—1

STANDING SENATE COMMITTEE ON
TRANSPORT AND COMMUNICATIONS

The Honourable J. Campbell Haig, *Chairman*

The Honourable Maurice Bourget, *Deputy Chairman*

The Honourable Senators:

Blois	Lawson
Bourget	McElman
Burchill	Molgat
Davey	O'Leary
Denis	*Perrault
Eudes	Petten
*Flynn	Prowse
Forsey	Riley
Graham	Smith
Haig	Sparrow
Langlois	Welch—(20)

(Quorum 5)

**Ex officio members*

Order of Reference

Extract from the Minutes of the Proceedings of the Senate, October 17, 1974:

"Pursuant to the Order of the Day, the Honourable Senator Heath moved, seconded by the Honourable Senator Forsey, that the Bill S-11, intituled: "An Act respecting British Columbia Telephone Company", be read the second time.

After debate, and—
The question being put on the motion, it was—
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Heath moved, seconded by the Honourable Senator Forsey, that the Bill be referred to the Standing Senate Committee on Transport and Communications.

The question being put on the motion, it was—
Resolved in the affirmative."

Robert Fortier,
Clerk of the Senate.

Minutes of Proceedings

Thursday, October 24, 1974.
(1)

Pursuant to Notice the Standing Senate Committee on Transport and Communications met this day at 9.30 a.m. and proceeded to the election of a Chairman and a Deputy Chairman, in compliance with Rule 69.

Present: The Honourable Senators Bourget, Denis, Haig, Langlois, McElman, Petten and Smith. (7)

Present but not of the Committee: The Honourable Senator Asselin.

In attendance: Mr. E. R. Hopkins, Law Clerk and Parliamentary Counsel.

On Motion of the Honourable Senator Langlois, seconded by the Honourable Senator Petten, the Honourable Senator Haig was elected *Chairman.*

On Motion of the Honourable Senator Langlois, seconded by the Honourable Senator Smith, the Honourable Senator Bourget was elected *Deputy Chairman.*

On Motion of the Honourable Senator Denis it was *Resolved* that unless and until otherwise ordered by the Committee, 800 copies in English and 300 copies in French of its day-to-day Proceedings be printed.

The Committee then proceeded to the consideration of the following:

Bill S-11: "An Act respecting British Columbia Telephone Company"

WITNESSES:

Communications Department:

Miss Margaret Prentis, Director,
Financial and Corporate Affairs;

Mr. Robert Somers,
Chief, Rates and tarifs.

Consumer and Corporate Affairs:
Mr. R. Viets,
Legal Branch.

British Columbia Telephone Company:
Mr. J. C. Carlile,

Vice-President—Administration.
Mr. Michael Butler,
Counsel.

Pitfield, MacKay, Ross and Company:
(Investment Dealers)
Mr. David Torrey.

After discussion and upon motion it was Resolved to report the said Bill without amendment.

At 10.45 a.m. the Committee adjourned to the call of the Chairman.

ATTEST:

(Mrs.) Aline Pritchard,
Clerk of the Committee.

Report of the Committee

Thursday, October 24, 1974.

The Standing Senate Committee on Transport and Communications to which was referred Bill S-11, intituled: "An Act respecting British Columbia Telephone Company" has, in obedience to the order of reference of Thursday, October 17, 1974, examined the said Bill and now reports the same without amendment.

Respectfully submitted.

J. Campbell Haig,
Chairman.

The Standing Senate Committee on Transport and Communications

Evidence

Ottawa, Thursday, October 24, 1974

The Standing Senate Committee on Transport and Communications, to which was referred Bill S-11, respecting British Columbia Telephone Company, met this day at 9.30 a.m. to give consideration to the bill.

Senator J. Campbell Haig (*Chairman*) in the Chair.

The Chairman: Honourable senators, we have before us Bill S-11, respecting the British Columbia Telephone Company. We have as witnesses: Miss Margaret Prentis, Director, Financial and Corporate Affairs, Mr. Robert Somers, Chief, Rates and Tariffs, Department of Communications; Mr. R. D. Viets, Legal Branch, Department of Consumer and Corporate Affairs; Mr. J. C. Carlile, Vice-President, Administration, British Columbia Telephone Company, and Mr. Michael Butler, Counsel; and Mr. David Torrey of Pitfield, MacKay, Ross and Company.

We shall begin with Mr. Butler.

Mr. Michael Butler, Counsel, British Columbia Telephone Company: Thank you, Mr. Chairman.

Honourable senators, I am a partner in the law firm of Farris and Company, a name which I hope is still favourably remembered in this chamber, and we act as general counsel for British Columbia Telephone Company, whose amending act is the subject of your consideration today. With me is Mr. J. C. Carlile, Vice-President, Administration of the company, the senior executive most knowledgeable of the problems related to the financing of the company, and also Mr. David Torrey who is a partner in the firm of Pitfield, MacKay, Ross and Company, investment dealers. They are the general financial advisers and underwriters of British Columbia Telephone Company. Also, as you have heard and as requested, we have representatives of the Department of Communications and of the Department of Consumer and Corporate Affairs present.

I have asked to have distributed to those who may be interested copies of the office consolidation of the existing special act respecting the British Columbia Telephone Company. This legislation was originally enacted in 1916 and has been subject to five amendments prior to this one which we are about to consider.

Also, honourable senators, the yellow sheets are copies of the material distributed to the ordinary shareholders of the company in connection with a meeting of shareholders which was held on Monday of this week to confirm the directors' resolution under which the petition was put to your house relating to the amending act. It is perhaps appropriate to state at this point that such a confirmation was forthcoming at the meeting by a virtually unanimous vote. Only 3,308 shares voted against, and that is approximately one-tenth of 1 per cent of those voting. Over 77 per cent of the ordinary shares of the company were present or represented by proxy at the meeting. This percentage is based on the share capital, without giving effect to a rights offering which actually closed on October 16 last, but I am told that the ever-speedy computer cannot give us a calculation giving effect to the rights offering for upwards of a month. So this is the only figure we can use, but it should not make any substantial difference.

If you disregard the majority shareholders of the company, over 54 per cent of the other shareholders were represented and over 99½ per cent of those voted in favour of this amending bill. Since the preferences and priorities of the existing classes of preference and preferred shares of the company are not affected by this proposed enactment, these classes of shareholders did not vote on this matter.

The purpose of the proposed bill can be very simply stated: it is, firstly, to increase the capital in contemplation of the company's needs over the next decade or more; and, secondly, to make the capital structure more flexible, in order to enable the company to meet the demands of the market place in competition for public financing during this period.

These changes are considered so consequential to the company and of such immediate need that it was determined to restrict the proposed bill to them alone, notwithstanding the desirability of other updating amendments to the existing enactment relating to both practical and technological changes and the current corporate practice and legislation. It is felt that in this latter respect the company can live with what it has, but such is not the case when one considers the present capital structure. Consequently, the amendments relate only to sections 4 to 7, inclusive, of the present enactment.

I propose therefore, with your concurrence, to review briefly the changes effected in each of these sections, and I will refer you to the bill, S-11, before you, which has not only the amending sections but also the original sections and explanatory notes.

Section 4, which is contained in clause 1 of the bill before you, is the general capital stock clause of the company. It is intended that this will provide for an aggregate nominal amount of capital stock of up to $250 million. Section 4 presently provides for only $5 million. This is a little confusing, in that in both cases, as I will

explain later, section 6. (1) permits further increases in the aggregate nominal amount of capital stock. This is the basic aggregate amount and then further increases are permitted with the concurrence of the shareholders. This section will also contemplate a variety of classes of shares, with or without par value, based upon the determination of the directors from time to time. Present references to the specific par value and to calls on the shares would be eliminated.

The amendments to section 5 effected by clause 2 of the bill are the most important changes proposed in this enactment. Section 5. (1) sets out in some detail the forms of capital structure which may be established by bylaw and the changes which may be effected in that capital structure. This subsection is substantially consistent with similar provisions in the Canada Corporations Act and is an updating of the present wording, which is proving unduly restrictive. Just as an example, there is no provision in the present enactment for conversion of shares to other classes of shares, nor for the redemption or purchase of shares, otherwise than at the option of the company.

I believe that both Mr. Carlile and Mr. Torrey would be able to expand on these additional types of financial structure and the need for them in current financing practices.

Senator Denis: Whenever such a change is desired, will it be necessary to call a meeting of the shareholders, or can this be done by the Board of Directors?

Mr. Butler: As will be seen from section 5. (3), any bylaw such as this will have to be approved by the shareholders. I should qualify that to the extent that in section 5.(1)(c) there is the provision that the bylaw may authorize the directors to prescribe from time to time, before issuance, the designation and the rights and conditions of any particular class or series. Once again, that would have to be, first of all, approved by the shareholders, but once that is approved the directors have the flexibility to determine the particular preferences.

Sections 5.(2) to (5), inclusive, deal with these voting rights. The main thrust of the subsections is to ensure that the present notice, attendance and voting rights of the existing classes of preference and preferred shares remain unchanged. There is absolutely no change whatsoever effected in the present rights in this regard of the existing classes of shares, other than the ordinary shares. Thus, the provisions of existing section 5.(2), requiring the holders of 75 per cent in par value of any class of preference or preferred shares to agree to any change in such rights, is carried forward, firstly in proposed subsection (4) and secondly in proposed subsection (3), both on the basis that these specific rights are set out in the provisions attaching to each class of shares.

Further, for the sake of certainty, section 5.(5) deals with things such as subdivisions, consolidations and reclassifications, and deems them to affect the rights attaching to any shares, thus assuring that the voting privileges apply in such cases.

With regard to the ordinary shareholders and also to the holders of any new class of preference shares that might be created—that is, as distinguished from the existing classes—the voting requirements which will be established by Bill S-11 are on the same basis as those in the Canada Corporations Act; that is, a two-thirds majority in each particular class of those voting must approve any such bylaw prior to its becoming effective.

The Chairman: This will be at a special general meeting?

Mr. Butler: At a special general meeting, sir, and if the rights of a new class of preference shares are affected, there would be a separate meeting for that class of preference shares. We would submit respectfully that this is a more appropriate provision than that presently existing with regard to the ordinary shareholders.

Section 5.(6) merely carries forward a provision relating to share qualification necessary to become a director. Any holding of any class of share qualifies one for that position.

The proposed section 5.(7) is a rather lengthy and complicated subsection. It deals with provisions relating to shares which are subject to redemption or purchase. Under the Canada Corporations Act this is dealt with in a long series of sections which are predicated upon the issuance of supplementary letters patent in the case of a reduction of capital. In view of this, in this company, where such does not apply, you will see that there is provision for a certificate to be granted by the Minister of Consumer and Corporate Affairs upon such terms as he may deem appropriate prior to any such reduction taking place. It is presumed that by virtue of such discretion the minister would require substantially similar procedures to be followed as are set out under the Canada Corporations Act. The wording changes in this subsection from that in the equivalent subsection (3) of the present enactment are not substantial. They are mainly for the purpose of bringing this subsection into line with the terminology of the Canada Corporations Act. The present subsection is based upon statutory sections as they read in 1941, and in their wisdom the legislative draftsmen have changed such wording over the past 33 years. However, it should be noted that this subsection will now deal with shares subject to purchase as well as those subject to redemption, which was not the case before.

Changes are proposed in both subsections 1 and 2 of section 6 of the enactment, as you will see if you refer to clauses 3 and 4 on pages 5 and 6.

In the former case—this is what I referred to previously —the amount to which the aggregate nominal amount of capital stock may be increased will be extended to $1,250 million. Presently it is $250 million, and it is the considered opinion of the company that this new figure may be required over the next decade or so to permit financing of the capital needs of the company during that period. Certainly the $250 million will be used up before the end of 1975.

Clause 4, on page 6. Subsection 2 of section 6 is a rather complicated transitory provision which was inserted in the enactment in 1951. Personally, I would have preferred to amend it out of the enactment completely. However, this would have required some quite compli-

cated amendments in various other sections. So, in the circumstances, we proposed merely a minor insertion, which has the effect of making this subsection subject to the provisions of the new subsection 1 of section 5, thus allowing bylaws approved by the shareholders to further amend the status of the ordinary shares, if so desired. As I said, it is a very technical wording change to make the subsection consistent with the proposed new sections.

Section 7 of the enactment, the last section being dealt with, is contained in clause 5 of the bill. This covers debt capital of the company as distinguished from share capital.

Various minor changes are proposed in this section, for the most part merely to make the same consistent with the Canada Corporations Act or to adopt current wording and methods common to the financial market place.

However, subsection 4 contains a change of substance. This subsection presently states that all debt securities, with some limited exceptions, shall be considered to be a first preferential claim and charge upon the company and its undertaking.

I believe that honourable senators will be aware that this is not a usual situation for a corporation, and this has proven unduly restrictive. For instance, subordinated debentures or convertible debentures are not available to the company under this subsection as it presently reads, and it does not appear to be a common requirement anywhere. In fact, it was amended out of the Railway Act in 1919, and I think it was upon the Railway Act in 1916 that this subsection was based. It took your houses only three years to get rid of it, but it is taking us quite a lot longer. Consequently, it is proposed that it should be modified to permit that where the specific debt security so provides the first charge may be eliminated, to permit such things as subordinated debentures and unsecured debt.

I have gone rather quickly over this in the form of a summary. It may well be that various questions may come to the minds of honourable senators. My colleagues and I will do our best to answer any questions.

The Chairman: Have officials of the company or the department anything to add to what has already been said?

Senator Denis: Has this bill been seen by the Department of Consumer and Corporate Affairs? I suppose a representative of the department is here. Have you looked into it?

Mr. R. D. Viets, Legal Branch, Department of Consumer and Corporate Affairs: Yes, sir.

Senator Smith: Perhaps I may make the assumption that the company is very well run indeed, because one who is helping run the company is from Nova Scotia. I respect the British Columbia corporation for being wise enough to obtain such a man to help it run the company. My question is: Are these amendments, in general terms, similar in their assignment of powers in various fields to the legislation under which Bell Canada operates?

Mr. Butler: I have with me a copy of the last amending act of Bell. It is substantially similar. We, perhaps in our pride of authorship, did not copy their words exactly, but in substance the answer to your question is, yes.

Senator Smith: I suppose you are not asking us for more power than is given to any other similar company? I mentioned Bell as an outstanding one.

Mr. Butler: I would not like to say absolutely definitely that the powers we are asking for are identical with Bell's. Their bill was some five or six years ago. I think that in substance we are asking for much the same, because in substance we are asking for what is normally granted to corporations under the various acts across the country. Bell did the same thing. There is a slight difference in the fact that we are created under a special act, as opopsed to letters patent. We do not come back and ask for supplementary letters patent when we create one of these share classes, but the protection is put in requiring shareholder approval.

Senator Smith: Mr. Chairman, I wonder if the witness could give us a summary, on the record, of the position regarding the ownership of the British Columbia Telephone Company with respect to its activities.

Mr. Butler: The yellow sheets before you have reference to this—on the second page of the information circular. It says:

> Anglo-Canadian Telephone Company—

I believe it is a Quebec corporation—unfortunately, not Nova Scotia.

> —is the beneficial owner of 1,640,644 ordinary shares...

This represents just in excess of 50 per cent of the outstanding share capital prior to the issuance of rights. Anglo-Canadian has taken out all the rights to which it was entitled, so that it will maintain that percentage ownership.

So far as the directors are aware, no other individual person or company, or even government, beneficially owns more than 10 per cent of the ordinary shares.

Senator Smith: Was there not a time not so long ago when rather substantial ownership was held in the United States? When Anglo-Canadian came into the picture, did they get some American shares, and thereby get control, or would they just buy whatever is available in this country?

Mr. Butler: I believe it is common knowledge that Anglo itself is controlled in the United States.

Senator Smith: I wondered.

Mr. Butler: I could ask Mr. Carlile to expand on that.

Senator Smith: These are just general questions. I am not particularly concerned with the actual fact of the matter. It seems to worry some people more than it does me, that control of such an important communications company would be in another country.

Mr. Butler: I am not quite sure of the number, but a large proportion of the directors of the company are Canadian citizens.

The Chairman: Does your company operate only in the province of British Columbia?

Mr. J. C. Carlile, Vice-President, Administration, British Columbia Telephone Company: We operate two small territories in the province of Alberta, just across from Fort St. John; they are very small. W also provide minimal services in the United States part of Point Roberts, which, as you know, is separated from the States.

The Chairman: Are there any further questions? Does anybody else in the delegation wish to say anything?

Senator Bourget: How do you intend to increase the capital? Do you intend to do it by the issuance of shares, debentures or bonds?

Mr. Butler: I should like to refer that to Mr. Carlile or Mr. Torrey.

Mr. Carlile: There would be various types of security but $1 billion extra would be in the form of preferred shares and ordinary shares. It is expected to meet our needs over ten years. We have maintained a capital structure of approximately 50 per cent debt. At the present time we have allowed it to increase to close to 60 per cent. Our ideal situation is approximately 50 per cent debt, 20 per cent preferred shares and 30 per cent ordinary shares. As a forward-looking picture, we will try to maintain that balance for the next ten years.

The Chairman: Are there any further questions? If there are no further questions, I will read a letter from the Law Clerk:

Dear Sir:

In my opinion this Bill is in proper legal form.

I should add that there are a few typographical errors in the Explanatory Notes which do not require formal amendment in Committee. These will be corrected before the Bill goes to the House of Commons.

Yours sincerely,
E. Russell Hopkins

That is dated October 22, 1974.

Any further questions?

Senator Smith: I wonder whether the representative of the Department of Consumer and Corporate Affairs has anything he would like to add to what has been said on the bill, as to whether the department has examined it and is satisfied. We have had no statement to that effect.

Mr. Viets: I have examined the bill and am satisfied that the procedure that has been followed is the correct one, and that no proceedings could be taken under the Canada Corporations Act. There is nothing in the bill that would, if it were under the Canada Corporations Act, be unduly disturbing.

The Chairman: In other words, you approve the bill?

Mr. Viets: Yes, sir.

The Chairman: That is all we want to know.

Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel: I should add that Mr. Viets addressed a letter to that effect to me, which is on the file.

The Chairman: Are there any further questions on the bill?

Do you want to consider the bill clause by clause, or shall we have a motion to report it?

Senator Bourget: I move that we report the bill.

The Chairman: We have a motion by Senator Bourget, seconded by Senator Langlois, that this bill be reported without amendment.

Motion agreed to, and bill reported without amendment.

The committee adjourned.

Published under authority of the Senate by the Queen's Printer for Canada

Available from Information Canada, Ottawa, Canada

LIBRARY
UNIVERSITY OF TORONTO



FIRST SESSION—THIRTIETH PARLIAMENT
1974

THE SENATE OF CANADA

PROCEEDINGS OF THE

STANDING SENATE COMMITTEE ON

TRANSPORT AND COMMUNICATIONS

The Honourable J. CAMPBELL HAIG, *Chairman*

Issue No. 2

THURSDAY, OCTOBER 31, 1974

First Proceedings on Bill S-5, intituled:

"An Act to enable Canada to comply with a Convention on the International Recognition of Rights in Aircraft"

(Witnesses: See Minutes of Proceedings)

STANDING SENATE COMMITTEE ON
TRANSPORT AND COMMUNICATIONS

The Honourable J. Campbell Haig, *Chairman*

The Honourable Maurice Bourget, *Deputy Chairman*

The Honourable Senators:

Blois
Bourget
Burchill
Davey
Denis
Eudes
*Flynn
Forsey
Graham
Haig
Langlois
Lawson
McElman
Molgat
O'Leary
*Perrault
Petten
Prowse
Riley
Smith
Sparrow
Welch—(20)

(Quorum 5)

**Ex officio* members

Order of Reference

Extract from the Minutes of the Proceedings of the Senate, October 23, 1974:

Pursuant to the Order of the Day, the Honourable Senator Giguère moved, seconded by the Honourable Senator Fergusson, that the Bill S-5, intituled: "An Act to enable Canada to comply with a Convention on the International Recognition of Rights in Aircraft", be read the second time.

After debate, and—
The question being put on the motion, it was—
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Giguère moved, seconded by the Honourable Senator Fergusson, that the Bill be referred to the Standing Senate Committee on Transport and Communications.

The question being put on the motion, it was—
Resolved in the affirmative.

Robert Fortier,
Clerk of the Senate.

Minutes of Proceedings

October 31, 1974.

Pursuant to adjournment and notice the Standing Senate Committee on Transport and Communications met this day at 9.15 a.m.

Present: The Honourable Senators Haig (*Chairman*), Bourget, Denis, Flynn, Graham, Petten, Riley, Smith and Sparrow. (9)

Present but not of the Committee: The Honourable Senator Rowe.

In attendance: Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

The Committee proceeded to the examination of Bill S-5 intituled: "An Act to enable Canada to comply with a Convention on the International Recognition of Rights in Aircraft".

The following witnesses, representing the Ministry of Transport, were heard:

Mr. L. Shields, Solicitor, Legal Branch;

Mr. P. S. Walker, Superintendent, Civil Aviation Regulations and Licensing Section;

Mr. C. A. Cowie, Inspector, Civil Aviation Regulations and Licensing Section.

The Committee also heard the following witnesses, representing the Federated Council of Sales Finance Companies:

Mr. D. E. MacKenzie, Vice-President, Secretary and General Counsel, Canadian Acceptance Corporation Ltd.;

Mr. Elton Doyle, Resident Counsel, Associates Acceptance Company Limited;

Mr. Peter Jiles, Vice-President and Secretary, United Dominion Corporations Canada Limited.

On recommendation of the Honourable Senator Flynn the Committee decided that the Attorney General of each of the provinces be consulted to obtain their views on this Bill regarding the question of federal jurisdiction on legislation relating to aircraft and of possible conflict with provincial legislation. In addition the Attorneys General will be asked to give their consent or rejection of the Bill.

At 11.45 a.m. the Committee adjourned to the call of the Chairman.

ATTEST:

Denis Bouffard,
Clerk of the Committee.

The Standing Senate Committee on Transport and Communications

Evidence

Ottawa, Thursday, October 31, 1974.

The Standing Senate Committee on Transport and Communications, to which was referred Bill S-5, to enable Canada to comply with a Convention on the International Recognition of Rights in Aircraft, met this day at 9.45 a.m. to give consideration to the bill.

Senator J. Campbell Haig (*Chairman*) in the Chair.

The Chairman: I see a quorum. The committee will discuss Bill S-5. Among the witnesses, from the Minister of Transport we have Mr. L. Shields, Solicitor, Legal Branch; Mr. P. S. Walker, Superintendent, Regulations and Licensing Section; and Mr. C. A. Cowie, Inspector, Civil Aviation. We have representatives also from Canadian Acceptance Corporation Ltd., United Dominion Corporations Canada Limited, and Associates Acceptance Company Limited. We also have a submission dated October 31, 1974. The front page of the submission refers to the House of Commons committee. That was an error in printing. It should be the Senate committee. We shall now hear from Mr. Shields. The bill was introduced in the Senate, received second reading and was referred to this committee on October 23, 1974. Mr. Shields, would you prefer to make a statement or answer questions?

Mr. L. Shields, Solicitor, Legal Branch, Ministry of Transport: Mr. Chairman and Honourable Senators, I understand from reading the *Debates of the Senate* that the intent and purpose of the bill has been explained. If any member of the committee has any questions, I would prefer to reply to those questions. I could go through the bill, but this seems unnecessary in view of the explanation given when it was introduced. It appeared to me to be quite exhaustive. I will attempt to provide an answer to any question to the satisfaction of honourable senators.

The Chairman: Mr. Shields will accept questions.

Senator Riley: I was not here when the bill was introduced, and should like to have a brief rundown on the general intent and purpose of the bill.

Mr. Shields: The bill was introduced primarily to enable the Canadian government to sign the Convention on the International Recognition of Rights in Aircraft. Some years ago an international convention was signed. Canada was not a party to that, and during the intervening years from the birth of that convention there really did not seem to be much necessity for giving serious consideration to it.

However, in recent years—in the last five, at least—due to the large cost of aircraft being obtained by Canadian air carriers, and also the fact that Canadian companies were becoming engaged in the manufacture of fairly large type of aircraft, it became necessary to find some better way of securing financial interest in an aircraft.

At present, if you have a financial interest in an aircraft, it is not entirely owned by the purchaser, and someone gives security for it, there is no way of knowing exactly what is registered against an aircraft unless you go through every registry office across Canada. Senators can conceive that this is an impossible task. You can go only to certain ones, because it would be impossible to go to them all.

The purpose of the bill is to provide one central registry office where all types of securities in relation to a particular aircraft are filed. The central aircraft registry, as conceived under this bill, is an information registry only. It will tell you only what is there. It will not certify the true title, who owns it, or anything else. It will simply tell you what is registered in the office against that aircraft.

There may be other liens against that aircraft that are not registered. In that event, only those that are registered in this registry will have priority. They have priority as of the date of registry.

It will also have priority over registrations that were in the provincial offices over a period of time. Persons holding security interest are not required by the bill itself to file their liens or security interests in the registry office. If they do not file them, they lose the priority against them; so that the aircraft may be sold or transferred without recongnition of those rights unless they are filed in this office.

Although it does not state that they have to be filed there, or should be or shall be, for all practical purposes it would be almost incumbent on a person having a financial interest in an aircraft to file his security in this registry.

Senator Riley: Is there any time limit on the registration?

Mr. Shields: Yes, there is. Once notice of interest is filed, it is valid for a period of five years. Then it will be deemed to have expired, unless the person who files it makes an application to have it renewed. It may be renewed for another period of five years, and so on.

Senator Riley: Is there any time limit on the original filing?

Mr. Shields: No.

Senator Riley: I take it this applies to components also—to parts?

Mr. Shields: It applies to an aircraft and the components of an aircraft which make up an aircraft. It does not apply to spare parts.

Senator Riley: To new engines, and that sort of thing?

Mr. Shields: Two engines or four engines, whatever is on the aircraft. It applies to whatever makes up the aircraft,

that is operative. It applies to whatever is necessary to make an aircraft operative. It does not apply to spare parts, because it has been found, from a survey of American practice in connection with spare parts, that spare parts are not always in the same place. They are not always used for the same thing. It is difficult to trace them, or to make the act applicable to them. So, for the time being, we have initiated this measure without including spare parts. It is an effort to get the thing on the road, to achieve a purpose which those engaged in air transportation have been asking for over a number of years.

Senator Riley: If I buy an aircraft in the United States, bring it to Canada and use it from a base in Canada—it is domiciled here—will this act apply to that aircraft?

Mr. Shields: It applies to any aircraft registered in Canada. The aircraft has to be registered in Canada, and you file your lien in the country where the aircraft is registered. They have a somewhat similar act in the United Kingdom. So if they file liens against that aircraft in the United Kingdom under their act and in accordance with their law, then we, by signing this convention, would recognize those rights. Similarly, if we sign the convention, other countries recognize rights filed in Canada.

Senator Riley: How many countries are signatories to it?

Mr. Shields: I think there are approximately 30 countries. The United Kingdom passed a similar convention recently. There are 39 countries.

Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel: Have they comparable legislation to this?

Mr. Shields: Yes. All those who have signed it must have similar legislation to this, otherwise they cannot comply with the convention. The convention restricts the type of legislation we may enact.

Senator Bourget: Have you discussed this problem with the provinces?

Mr. Shields: Not in an official sense, but it has been discussed with the Canadian Bar Association representatives of all the provinces, and they have advocated this over a considerable period of time. They support our effort in getting this on the road.

Senator Bourget: But you have never discussed this problem with the provinces?

Mr. Shields: Not on an official basis. We understand that most provinces feel it is something that should be done; but on an official basis, no.

Senator Riley: It is without the jurisdiction of individual provinces?

Mr. Shields: The jurisdiction matter has been considered through the Department of Justice. Their opinion is that it is within the jurisdiction of the Parliament of Canada to pass this legislation. It is based on a Supreme Court of Canada case—the Johannsen case, which gave the power in all matters concerning aeronautics to the federal government.

The committee will notice that in this bill there are provisions which relate to the use of aircraft for commercial air services. Those provisions are there primarily in support of our jurisdiction, that the right to interfere with commercial air services is restricted by virtue of this act against a person holding a financial interest.

Senator Riley: Senator Flynn questioned what I said about jurisdiction, and I bow to his superior experience, age and knowledge. He is a good lawyer—

Senator Flynn: Get to the point.

Senator Riley: I can see right away what he had in mind. If I had an aircraft in which I was hopping from, say, Ottawa to Cornwall, that is hardly an interprovincial undertaking.

Mr. Shields: The fact that the aircraft is operated only between Ottawa and Cornwall does not have anything to do with the federal government's jurisdiction in relation to aircraft.

Senator Riley: What act are you talking about?

Mr. Shields: I am talking about the Aeronautics Act.

Senator Flynn: I would like to deal with the point to which Senator Riley alluded. Presently there are provincial laws applicable to movables, including aircraft. We have the commercial pledge in Quebec. If I buy a plane in Quebec and I finance it, the lender registers a commercial pledge in accordance with the laws of Quebec. You suggest that because of section 9 and other sections of this act, the lender could not enforce his lien on the aircraft?

Mr. Shields: After this act comes into effect and it is registered only in Quebec, yes.

Senator Flynn: I could not?

Mr. Shields: No, unless it is registered under this act.

Senator Flynn: How can you reconcile that with the statement that is often made that this new system remains optional?

Mr. Shields: That is what I stated. It remains optional. You do not have to take advantage of it. But if you do not take advantage of it, you are apt to lose the right of your security interest. Your security interest will be perhaps overriden. It loses its priority in respect of other security interests which are registered under this act.

Senator Flynn: What will be required is a jugment of a court stating that provincial laws with respect to aircraft are ultra vires.

Mr. Shields: I agree that in order to decide this particular question once and for all there would have to be a court case. That very point was considered by the officials of the Department of Justice when this legislation was drawn up, and it is the opinion of the departmental officials that the federal government has the power to enact this legislation. That, of course, does not mean that it does have that power. It may very well have to be decided by a court of law as to whether, in fact, it does have the power to enact and enforce this legislation.

Senator Flynn: Whether or not the opinion of the departmental officials is correct, there will be a state of indecision until a final decision is arrived at by a court of law declaring provincial laws ultra vires in respect of aircraft. The laws of the provinces remain on the statute books; they have been applied to aircraft and they are applicable in principle, in any event. What is going to

happen until such time as a decision is finally made on this point?

Mr. Shields: I perceive what will happen, Senator Flynn, is that the legislation will be proceeded with and perhaps at some point some provincial body will take the matter to court. Until such time as that happens, it will be the law of the land.

Senator Flynn: It will be the law of the land, as will be the provincial laws that are applicable in this respect.

Mr. Shields: As you know, if the federal government has jurisdiction in one matter, matters corollary to that, even though they run into the provincial sphere, are held to be under federal jurisdiction.

Senator Flynn: I am aware of ancillary powers, but if you look at this legislation, it merely recognizes all rights in aircraft, which is purely property and civil rights. It is not a question of operating an aircraft, or of licensing an aircraft to operate, nor is it a question of interprovincial transportation. This legislation is only concerned with property rights in an aircraft.

Mr. Shields: Not strictly, senator.

Senator Flynn: It certainly is.

Mr. Shields: One of the chief points in connection with this legislation is that it is in connection with an international convention.

Senator Flynn: But the international convention deals only with property rights. In addition, as you well know, Mr. Shields, the federal government has refused to sign treaties where there were clearly provincial rights involved.

Mr. Shields: It is an international convention.

Senator Flynn: It doesn't matter whether it is international or national.

Mr. Shields: The federal government is the authority that enacts legislation in respect of international conventions.

Senator Flynn: I respectfully disagree.

Mr. Hopkins: I, too, disagree.

Senator Flynn: I have no objection to the bill itself. I think everyone concerned would be happy with this legislation. That seems to be the purport of the submission prepared by the Federated Council of Sales Finance Companies. However, they want to know where they are going as far as their rights are concerned. As long as the provinces do not agree to turn this entire field over to the federal government, there will be conflicts of laws as between the federal and provincial governments.

I cannot understand why the department would bring this legislation down before having obtained from the provinces their consent or their agreement to amend their laws, or to do something that will alleviate any conflicts which might arise. As matters stand now, this bill merely creates confusion.

Mr. Shields: I have just now been handed the submission prepared by the Federated Council of Sales Finance Companies.

Senator Flynn: That is the problem raised in that submission.

Mr. Shields: I have not as yet had an opportunity to read their submission, but I think I know what it amounts to. Some finance companies and banks are in the habit of making floating charges . . .

Senator Flynn: It is not a habit; it is the present legal situation.

Mr. Shields: Yes. They make floating charges on all the assets involved. If this legislation comes into effect, it will only be valid in so far as aircraft are concerned, and the aircraft has to be specified. In other words, the particular aircraft will have to be specifically designated. Because of that they feel it is going to cause them some problems.

Senator Riley: Perhaps the representatives from the Federated Council of Sales Finance Companies could deal with that question.

Senator Flynn: In the province of Quebec the claim can be registered against the specific aircraft. When you speak of floating charges, that is something else. Floating charges can be likened to a bond which is guaranteed by floating charges on several assets. You can also have a specific lien on a specific aircraft under the laws of the common law provinces, and under the Commercial Pledge Act in the province of Quebec.

Mr. Shields: Those provincial laws are made not only in relation to aircraft but in relation to movables, and chiefly motor vehicles.

Senator Flynn: No, not chiefly motor vehicles.

Mr. Shields: Unless they had no particular reference to aircraft. Otherwise, they would be included in the same legislation.

Senator Flynn: Not chiefly. I cannot see a court of any province, on the basis of this legislation only, enforcing the seizure of an aircraft to enforce a lien registered under provincial laws, unless the federal government intervened by having the provincial laws in this respect declared ultra vires. Without that intervention, anyone who wants to proceed under provincial laws, I suggest to you, with respect, will be able to do so, and there is no provincial court which will refuse such an application.

Senator Bourget: Mr. Chairman, not being a lawyer, I should like to know whether the effect of this registry is strictly an information system.

Senator Flynn: If it was only an information system, Mr. Shields could not say that anyone wanting to enforce a right in an aircraft has to apply pursuant to this legislation.

Mr. Shields: It is an information system in the sense that title to an aircraft will not be certified. It will simply show what is registered against the aircraft, and what is registered in this registry against an aircraft will be the only valid lien, and charges against it, assuming this legislation comes into effect.

Senator Riley: Will this legislation supersede the provincial mechanic liens acts in respect of labour, and so forth?

Mr. Shields: Yes.

Senator Riley: That would bother me.

Mr. Shields: That is dealt with in clause 6(c), which reads as follows:

> (c) a person who, in such circumstances as are prescribed, has provided equipment or services in relation to the aircraft.

Senator Riley: It would seem to indicate that this legislation, if it is enacted, will supersede the mechanics liens acts of the provinces.

Senator Bourget: It seems that way to me, not being a lawyer.

Mr. Shields: As Senator Flynn has pointed out, there may be a dispute between the federal and provincial governments, but on the basis of the research conducted by the departmental officials, and on the basis of aeronautics coming under federal jurisdiction, what is corollary to that comes within federal jurisdiction, and particularly so in this case in view of the fact that there is an international treaty involved. For those reasons, the federal government feels it is justified in bringing down this legislation. However, as Senator Flynn has pointed out, there has been no final decision on it.

Senator Flynn: Since there has been no decision, a state of indecision exists.

Mr. Shields: I might add, it is the opinion of the barristers involved in the aviation field and the people concerned with the Canadian Bar Association that it is federal jurisdiction.

Senator Flynn: I doubt that.

Mr. Shields: Since lawyers outside of the department who are involved in the aviation field, as well as the legal branch of the Department of Justice, feel that the federal government has jurisdiction in this area, surely there is ample reason for it to proceed with the enactment of this bill and, you might say, take its chances.

Senator Flynn: With respect, I suggest to you that the people concerned want this legislation to be the only legislation applicable to aircraft. I think everyone is in agreement with that. It would certainly simplify the problems that exist presently. However, that does not necessarily mean that all problems will be solved. There are many other problems involved here.

It is my view, Mr. Chairman, that the committee should write to all provincial attorneys general to get their views on this legislation. I think it is our responsibility to do so, not only because we want the provinces to have an opportunity to express their views on it, but to protect the public at large. Otherwise, we will be creating a state of utter confusion as to the applicability of provincial laws and the federal law in this area, and I would resist that very much.

Senator Bourget: Mr. Chairman, I agree with Senator Flynn's suggestion. The Law Clerk seems to be of the same opinion.

Mr. Hopkins: I do not want to be misquoted. What I said was that we cannot enlarge federal jurisdiction merely by entering into an international treaty.

Senator Bourget: Yes. In any event, I do feel the suggestion made by Senator Flynn is a reasonable one and one which should be pursued.

Mr. Shields: If the committee does write to the provincial authorities to obtain their opinions, what does the committee gain? The committee will get no more than an opinion, resulting in it having to deal with one opinion versus another.

Senator Flynn: Are you sure that the opinions by the provincial attorneys general are going to be contrary to that of the department? If the provincial authorities say they are in favour of this legislation and agree to amend the respective provincial laws in this respect so that there is no conflict, I, for one, will certainly be more secure in passing this bill.

Mr. Shields: What I am saying is that you will simply get an opinion from some person.

Senator Flynn: Yes, as we have received an opinion from the Department of Justice.

Senator Riley: If we get opinions from elected officials, those opinions would reflect the views of the public.

Mr. Shields: But the committee will not get anything more definite than it has now until a final decision is made by a court, regardless of the opinions expressed by the provincial authorities.

Senator Flynn: I do not see why you say that. If the provincial authorities share the view of the department, then there is no problem.

Mr. Shields: I do not see where you are any better off by pursuing that.

Senator Flynn: If all parties concerned agree that this entire field is within the jurisdiction of the federal government, I will certainly feel more at ease.

Senator Riley: Mr. Chairman, I am inclined to agree with Senator Flynn's suggestion. Some of the countries who are signators to the convention would not have the same problem.

Mr. Hopkins: A unitary state would not have any problems in this respect.

Senator Riley: If I feel I have an interest in an aircraft, how long is it going to take to deal with it? Even lawyers are not all well versed in the changes in this sort of legal procedure. I might place a lien on an aircraft and tell my client that for these services there should be a lien on his aircraft and find out that the lien has to be registered through the federal court. I would think that as a matter of courtesy the provinces should be approached and, if they are at variance with the federal concept of this legislation, let it be fought out in the courts on a jurisdictional basis.

Senator Flynn: Further to your remarks I might add that presently, without this legislation, there is no problem. The situation may not be as satisfactory as we would prefer, but you can register a lien against an aircraft under the applicable provincial laws and there is no problem of conflict of jurisdiction. We have gone through this for 25 years, since this International Convention was introduced, but there is no confusion or problem at present. If this legislation is passed without more assurance given that it is valid and desirable, we may worsen the situation.

Senator Riley: I might add that the whole idea of central registration is good.

Senator Bourget: I agree with that.

Senator Flynn: Yes.

Mr. Shields: You say there is no problem at the present time?

Senator Flynn: Well, there are, but they are not comparable to those we would face if this legislation were enacted without assurance that it is within the federal powers.

Mr. Shields: At this time a person who has a security interest in an aircraft does not know if that interest is of any value.

Senator Flynn: He knows, because in the absence of federal legislation on this point there is no doubt that the present provincial laws are valid and applicable.

Senator Riley: I do not wholly agree with that, Mr. Chairman, because I might register in Newfoundland an aircraft based in Ontario and owned by a Newfoundland company. It is very difficult for those who might find it necessary to place a lien on that aircraft to find out where it is registered.

Senator Flynn: It all depends; in some cases there might be problems, but they would not all be solved by this legislation.

Mr. Shields: In the case of an aircraft moving from one province to another, a search would have to be made in the registry offices of every county and district of every province into which the aircraft moved, which is impossible, therefore you do not know.

Senator Flynn: As far as the main claim on an aircraft is concerned, which is usually the cost of purchase, the lender will register his lien under the applicable provincial law. Certain conditions will be provided in this. Of course, he cannot prevent the aircraft from being used outside the province, but he has to take the usual precautions. The plane cannot be prevented from flying outside Canada, either, and this is not a problem that this legislation will solve.

Mr. Shields: Oh, yes; it certainly will solve it.

Senator Flynn: If it goes to a country which is party to the treaty, but not elsewhere.

Mr. Shields: All the large trading nations will be participants.

Senator Flynn: Just those, yes, but there would be a state of confusion.

Senator Riley: The chattel mortgage would have to be registered as a lien in every county in every province.

Senator Flynn: Not in Quebec. I think you would have to register it where the purchaser has his place of business or his domicile. That would be sufficient. Of course, if you are speaking of fraud, that is something else.

The Chairman: As this constitutional question has been raised, which I intensely dislike, we will take note to advise the provincial attorneys general of this proposal in the bill and ask for their consent or objection. Is that agreed?

Hon. Senators: Agreed.

The Chairman: In view of that and as Mr. Shields was whacked around a bit, we will now try Mr. P. S. Walker, Superintendent, Regulations and Licensing Section. Mr. Walker, do you have a Statement to make, or are you prepared for questions?

Mr. P. S. Walker, superintendent, regulations and licensing section, ministry of transport: Mr. Chairman and Honourable Senators, about the only statement I have is that I am here in a technicaland administrative capacity, rather than in a legal capacity.

The Chairman: Then no more constitutional questions will be raised.

Senator Flynn: You will be speaking more to the provisions of the Aeronautics Act which deals with the regulation of the operation of aircraft?

Mr. Walker: To that extent and also as to how this legislation would be administratively implemented.

The Chairman: Mr. C. A. Cowie, Inspector of Civil Aviation is here. Do you have a statement to make?

Mr. C. A. Cowie, Inspector, civil aviation, ministry of transport: Mr. Chairman and honourable Senators, I would only say one thing right now. If you were to go out to Uplands airport to buy an airplane right now, under the present system you can have no idea whether there is a lien against that aircraft.

Senator Flynn: Not at Uplands, for sure.

Mr. Cowie: You could buy an airplane from a person, for instance, from Vancouver and could sell it to a person in Ottawa, who could sell it to a third party, and there is no way or knowing where a lien has been filed in Canada. The whole point of this legislation is to bring it all together so that anyone who wishes to buy an aircraft could readily find out what is actually registered against it.

Senator Flynn: I agree, but his is not the only field in which a person would not know about something he wished to purchase. You say that about an aircraft, but the same thing would apply in many other fields. This is not a new problem.

Mr. Cowie: No, but aircraft moving the way they do, this is our main concern.

Senator Riley: There is an ever-increasing business, I understand, in this country and others, of buying aircraft from surplus divisions in other countries, or bringing them in to the country and refurbishing them here.

Mr. Cowie: That is true.

Senator Riley: And if it is an American aircraft being brought in, such as a helicopter, this central registration would apply, again giving those working on the aircraft and refurbishing it a right to file a lien locally.

Mr. Cowie: Under the act, anyone with a claim against such an aircraft can file it. Under this proposed system it must be done through the central registry.

Senator Flynn: If the aircraft is registered.

Mr. Cowie: Yes.

Senator Flynn: But what happens if it is not registered?

Senator Riley: What happens if a surplus aircraft is bought in the United States and brought into Canada? Must it be registered before it is refurbished?

Mr. Cowie: No; the aircraft does not have to be registered unless it is to be flown. Also, if it is to be flown into Canada it must be registered.

Senator Flynn: Not under this legislation, but under the Aeronautics Act.

Mr.Cowie: That is right.

The Chairman: So that means a foreign aircraft being brought in has to be registered in Canada if it is going to be flown in Canada?

Senator Flynn: Yes.

Senator Riley: After it is refurbished, or after it is rebuilt?

Mr. Cowie: It must be registered somewhere. If it is registered in the United States and there is a lien against that aircraft it would be filed in Oklahoma City.

Senator Riley: Does the same apply to government aircraft as to civilian aircraft? Must they also be registered?

M. Cowie: That is right.

The Chairman: Are there any further questions before we get into constitutionality?

Senator Riley: Oh, now, Mr. Chairman. I disagree with your view. As members of this committee we are entitled to ask questions and the constitutionality is an important aspect as far as the Senate is concerned.

The Chairman: We have discussed that, Senator Riley, but I am willing to sit here as long as you are willing to sit with me. No one else is going to use this room today.

Senator Riley: I appreciate that, but I do not think we should jump too quickly from one witness to another. It takes time to consider some of these questions and we would like to have information. At least, I would. I am just a neophyte here and I would like to get answers to the questions before I make any decision with respect to voting. That is all.

You say an American aircraft which is declared surplus in the United States and is transported to Canada by a common carrier does not have to be registered in Canada until it is going to be flown. Does that apply to test flights?

Mr. Cowie: No. An aircraft to be flown must be registered somewhere.

Senator Riley: That is right.

Mr. Cowie: If it is a United States surplus aircraft, purchased by a citizen of the United States who wishes to bring it into Canada for some work to be done, the aircraft must be registered somewhere.

Senator Riley: That is correct.

Mr. Cowie: If it is a United States surplus aircraft purchased by a resident of Canada who wishes to bring it into Canada to be flown, it must be registered in Canada before entry.

Senator Riley: Must it be registered before being brought in, although it would not be flown in?

Mr. Cowie: No. If it is trucked in, the aircraft does not have to be registered at all, but it must be registered prior to being flown.

Senator Riley: That is correct.

Mr. Cowie: If it were a United States army helicopter, for example, and a resident of Ottawa went to the United States to buy it, he could bring it back in a truck. This may be just an army helicopter, spare parts, or some junk. When it is fixed up, if it is to be flown it must be registered first.

Senator Riley: Even for test flying?

Mr. Cowie: Yes, he must register it. If it is going to be flown in Canada the aircraft must be registered in Canada. If it is to be returned to the United States after being rebuilt, it could be registered in the United States.

Senator Riley: Therefore the burden would be on the Canadian buyer of that surplus aircraft to search the central registry, or whatever it is known as, in the United States before bringing the aircraft into this country.

Mr. Cowie: That is right. That is our point.

Senator Riley: Even though it is declared obsolete by the United States Air Force?

Mr. Cowie: Yes, and this is part of the agreement in the actual convention, that a civil aircraft will not be taken off the registry of one country to be exported to another country unless the liens have been satisfied by being paid off or obtaining the agreement of the lien holder to the export.

Senator Riley: That is correct.

Mr. Cowie: Therefore, if the aircraft is subject to a lien in Canada under a central system and someone were to remove it from the country to sell it, it could not be removed from the registry in Canada until the central registry was informed that an agreement had been made. Therefore, the aircraft could not be re-registered and flown in that foreign country until we had notified them that the registration in Canada had been cancelled. The aircraft would therefore sit on the ground in that foreign country, in which event everyone would lose.

Senator Flynn: With due respect, I think you are creating confusion, maybe without wishing to do so. This registration of which you speak as being applicable to liens cn an aircraft does not presently exist in Canada.

Mr. Cowie: That is correct.

Senator Flynn: You are making reference actually to regulations concerning the operation of the aircraft, which is something else and has nothing to do with the registration of liens or rights in aircraft. They only forbid the operation of an aircraft without a licence. That is why you said you could buy an aircraft in the United States and truck it in without having to register it. However, the moment that aircraft is to be operated it must be registered, but that is not provided in the legislation now before us.

Mr. Cowie: That is correct. It is provided in the Aeronautics Act.

Senator Flynn: And the Aeronautics Act does not provide for liens or rights in aircraft.

Mr. Cowie: No, but this bill and the Aeronautics Act, although separate, will dovetail.

Senator Flynn: They would eventually, if it were so desired, but they are not basically related. One is concerned with safety and the other with property and civil rights.

Senator Riley: Is there provision in this bill that the Aeronautics Act complements this bill and vice versa?

Senator Flynn: No.

Senator Riley: I suppose my next question should be answered by Mr. Shields. What about the sales tax provisions—the authority to collect provincial sales tax? Does that have any bearing on this?

Mr. Cowie: I could not answer that.

Senator Flynn: I doubt it. The provincial sales tax is applicalbe to the purchaser. If a person purchases a movable object and brings it into a given province, there is a tax applicable to that person. The tax is imposed on the purchaser; the jurisdiction is based on the domicile of the purchaser.

Senator Riley: Does the province not have the right to deny the transfer of the commodity if the sales tax is not paid?

Senator Flynn: Not the Quebec sales tax. The only thing you can do is sue the purchaser, because he is the one liable to the tax. I am referring to the Quebec legislation and not to others. However, I understand they are practically the same all across Canada.

Senator Riley: If you buy an aircraft, or an automobile under the Motor Vehicle Transport Act, and you cannot produce a receipt for the payment of the sales tax, a transfer is then liable; is that correct?

Senator Flynn: I had a case like that. If you buy a car—let us say you come from the United States with a car—normally you are supposed to pay the sales tax on the car. They may say, "If you do not pay the sales tax, we will not register the car." But that is an abuse of their powers. It is really two things. I had a case, and I forced the registration officers to register the car. I said, "If you want to sue for the tax, then sue." But it is not related. They are two different problems.

Mr. Hopkins: In Some jurisdictions there might be a lien on the car.

Senator Flynn: I do not know whether they could go as far as that.

Mr. Hopkins: Presumably, when we receive replies from the provinces, reference might be made to this.

Senator Riley: There is no uniformity in the Motor Vehicle Transport Act?

Senator Flynn: No.

Mr. Hopkins: In any event, this legislation before us has nothing to do with tax.

Senator Riley: Unless there is a lien involved on the commodity.

Mr. Hopkins: Yes.

The Chairman: Our next witness is from the Canadian Acceptance Corporation Ltd. He is Mr. D. E. MacKenzie, Vice-President, Secretary and General Counsel.

Mr. D. E. MacKenzie, Vice-President, Secretary and General Counsel, Canadian Acceptance Corporation Ltd.: Mr. Chairman and honorable senators, on my far right is Mr. Elton Doyle, who is the resident solicitor of Associates Acceptance Company Limited. On my immediate right is Mr. Peter Jiles, Vice-President and General Counsel of United Dominion Corporations Canada Limited.

Before starting, I would like to apologize for the poor condition of our brief and for the fact that it has not been translated into French.

The Chairman: We accept both apologies.

Mr. MacKenzie: Might I make a couple of changes in the draft submitted. On page 3, in the fifth line, there is reference to section 6(4). That should be section 5(4). On page 9, the middle paragraph, from the word "Further" in the sixth line, to the end of the paragraph, should be deleted. That has been corrected by an amendment which we missed.

Mr. Hopkins: These corrections would have to be made by amendment to the bill, would they not?

Mr. MacKenzie: This is in our brief, sir. The last word in the sixth line, and down to the end of the paragraph, should be deleted.

I am almost frightened to discuss the point I wish to make, because it really relates to constitutionality, but on a peripheral basis, as to how it affects the businessman.

First, we are not experts in dealing with aircraft, but a secured lender takes a secured interest in aircraft, which may run from the smallest Piper Cub to very large commercial aircraft. This is peripheral to our business. We do not deal solely in aircraft, but with registration systems. How do we protect our position with respect to security interest in personal property of whatever kind? Therefore we are familiar with problems that arise out of registry systems. Obviously we would be delighted if we could have a central system for aircraft.

Under this bill in its present form, not only will we have to register to be sure of our position, but we will have to register under all the provincial provisions, because the status of this question is by no means clear. In attempting to protect oursleves under a provincial system there are difficulties, but in nine times out of ten there is not much difficulty in finding out, or deciding, where you should register to protect your position. But under this bill we will have to register under a federal act.

We then get down to the very difficult question of trying to assess priorities between a federal act that purports to set up priorities, and a provincial act which purports to set up priorities. As businessmen we do not need those kinds of problems. We would love to see a central registry, and we think it is possible.

Rather than write the provinces for an opinion, would it not be possible for the federal government to ask provincial governments to delete from their security interest acts reference to aircraft, so that their acts will not apply to aircraft? It is then picked up by the federal act. That to my mind is a practical businesslike approach. That is the sort of thing we would like to see happen. We would then bless this act as much as we possibly could.

I have had some involvement with the province of Ontario. I was one of the draftsmen of the Personal Prop-

erties Security Act, which will be coming into force in Ontario in the next little while. I have spoken to some of the people in the department. This is strictly unofficial. They are people I know. I said, "What would you feel, as registrar, under the United States system, if aircraft were excluded?" They do not get up-tight about that at all. I cannot speak for anyone else, and this is purely unofficial, but it seems as though the practical way of doing it is to ask the provinces to ensure they are not in the field, by excluding it from their security acts. We would then be very happy with this legislation.

The next problem we have—these are important problems—is, how do you resolve some of these questions? We as lawyers have to give opinions to our company on what the risks are, or what kind of an interest they are getting.

The definition of aircraft merely covers an aircraft. It is not clear whether this definition would cover a part of an aircraft. An individual aircarft may, in effect, have one and a half engines, because if a company has a fleet of three, they have one engine in each aircraft, and a spare. The people who are financing, advancing, or taking a security interest in individual aircraft may not have an interest in the spare engine. Someone else might have an interest in that spare engine. Can that someone else register under this act his security interest in that engine, if he defines his engine? It could apply also to radio equipment, and to the sort of thing that now costs, in some of these large aircraft, $1 million. Honourable senators may have different finances. The definition of aircraft here does not make it clear whether it has to be the whole aircraft or in a given instance, a component part of an aircraft, whether or not it is affixed to that aircraft.

When the bill refers to component parts, it refers to permanently-installed component parts. But if you are dealing with a spare engine, it may never have been permanently installed. It may never have been installed in a given aircraft which is financed. We are suggesting that the definition of aircraft should make it clear that it is the aircraft and parts of aircraft, and that you can register security interest with respect to those individual parts.

Senator Riley: If you have an interest in an aircraft, you can register it.

Mr. MacKenzie: What I am suggesting is that you may only want to register a lien with respect to the engine. If I were financing the engine only and I attempted to register a security interest in the whole aircraft, I may hamper the owner of that aircraft in raising further moneys on it. If I register a security interest in the whole aircraft when I am only interested in the engine, then I am overcollateralizing myself.

If the engine I finance is worth $10,000 and the aircraft is worth about $100,000, and to secure my $10,000 I take a security interest in the whole aircraft, then I will effectively hamper the owner's equity position should he wish to obtain a further $80,000 from another lender. We are dealing with priorities, with business transactions where people are raising money on their properties. We feel that the definition of "aircraft" should be expanded or made clear as to just what is involved.

Senator Riley: If I sold you a new engine for your aircraft and held a chattel mortgage on it, you would not have title to that engine, but only the equity of redemption, would you not?

Mr. MacKenzie: Yes, up to a point, but then accessory laws enter into it where you may get it by accession. I might be able to get it by paying you off and taking your engine away from you.

Senator Riley: But as a holder of the chattel mortgage, I have priority over you?

Mr. MacKenzie: Yes, as long as you had that position before it was affixed to the aircraft. If you had it after it was affixed, then you would not have priority.

Senator Flynn: Those problems have been solved under the Canada Shipping Act. There is no problem of jurisdiction under the Canada Shipping Act with regard to the registration of liens on parts of ships, and so forth.

Mr. MacKenzie: You should be able to make sure you can register against the engine, if that is the way you want to go about it. In relation to spare parts, it seems we are creating a position where a Canadian financier of spare parts would not be protected. The proposed legislation excludes spare parts. The American act, on the other hand, does not exclude spare parts, so we would be creating a situation where an American financier of spare parts stored in Canada, because he can register in the United States through the international convention, is protected, whereas the Canadian financier of spare parts stored in the United States, because spare parts are not covered in the proposed legislation, would not get the same protection. We point that out in passing simply as one of the aspects of this exclusion of spare parts. That is dealt with in clause 5(4).

Senator Riley: If you carried that ad absurdum, the same thing could apply to a new picture tube in a television set. In other works, you as the financing agency would have to search the registry office to see whether somebody had an interest in it. But you do not do so, as a matter of fact.

Mr. MacKenzie: No, we do not. The horrifying aspect of this is that spare parts could include a spare engine worth $1 million. The problems become much more important with the amount of dollars involved.

The other problem we have under the proposed legislation—and this is not all that serious, but it should be clarified—relates to what is going to be registered. This may well be set forth in the regulations. Clause 5 of the bill, and elsewhere, deals with the notice to be filed. There is provision for notice where one would file a very brief note stating that there is a security interest in such-and-such an aircraft, with the name and address of the secured party being set out as well as the name and address of the registered owner. That is all that is on the record. That is what is going to be set up under the Ontario Personal Property Security Act. The document creating the security interest itself is not registered. That is fine, as long as the act goes on to provide the right for anyone having an interest or a prospective interest being able to go to the party that holds the security interest to obtain a copy of the security agreement so that he is aware of what his rights are and what his position is. Otherwise, it does not go far enough. It has to provide the right for people to obtain information. Under all the provincial acts, you file the document itself. If anyone wants to read the document, they can do so. Under the proposed notice filing system, no document is filed. The only place one can get a copy of the document is from the secured party who holds it, and the

right to do so must be made available in law in the event that he does not voluntarily provide it.

Senator Riley: Would there be any conflict between this proposed legislation and any of the provincial corporate securities registration acts?

Mr. MacKenzie: Yes and no. There is a uniform corporate securities registration act on the statute books of six or seven provinces, Ontario being one of them.

Senator Riley: Would this proposed legislation supersede a corporate securities registration act?

Mr. MacKenzie: If the Department of Justice is right and if an aircraft is involved, it should. The corporate securities registration act is just another act creating or regulating the creation of a security interest. If a province were prepared to exclude aircraft from conditional sales acts and chattel mortgage acts and, in Quebec, the commercial pledge act, then you would have to include the corporation securities registration acts, and I cannot see any reason why they would not do so.

Senator Riley: If you filed a corporate security agreement under the provincial act, you would have to issue a caveat, would you not, that it does not apply to aircraft, which must be registered under this proposed legislation?

Mr. MacKenzie: Yes, but what I am saying is that you would have to exclude security interest in aircraft from being registered under the corporate security registrations act at the provincial level.

Mr. P. A. K. Jiles, Vice-President and Secretary, United Dominion Corporations Canada Limited: You would have to register in both places.

Senator Riley: Yes. The financier would have to make a search to determine whether all the assets and replacements are covered by this security agreement which is registered and of which notice given. It would create some confusion, I should think, if it were not noted in the security agreement, whatever form it may be, that aircraft are excluded, irrespective of the legislation.

Mr. MacKenzie: It seems to me that in Ontario—and I am speaking from memory—either the Chattel Mortgage Act or the Corporate Securities Registration Act, excludes registration under the other act. In other words, if you register under the Corporate Securities Registration Act you do not have to register under the Chattel Mortgage Act. There is that type of exclusion in these acts presently.

Senator Riley: I am not sure of that.

Senator Flynn: Senator Riley has raised an interesting point. When a company issues bonds, under the trust deed it provides for a floating charge on all moveables and all those which are acquired subsequently. If you have a floating lien on an aircraft under provincial law, what control will you have?

Senator Riley: A search would have to be made in the central registry.

Mr. MacKenzie: You would have to search both places, and in that case you would have to register in both places.

Senator Flynn: But you will have to follow all the acquisitions made subsequent to the registration.

Mr. MacKenzie: With all due respect, that is the situation now.

Senator Flynn: That would destroy the lien you have created under the present law.

Mr. MacKenzie: If a $100,000 eart-mover is acquired and I did not pick it up and get a lien on it, I might be in the same box if they moved it to another province.

Senator Flynn: If they moved it to another province, yes.

Mr. MacKenzie: When you are delaing with floating securities, you are always at risk of new equipment coming in and old equipment going out.

Senator Flynn: If there is fraud or negligence, you cannot prevent that, but this legislation would void the right which is created now under the trust deed.

Mr. MacKenzie: Yes, I think you are right.

Senator Riley: The floating charge would apply to a corporation which does not presently own an aircraft, but if it acquires one that charge would be registered under the federal jurisdiction with the central registry?

Mr. MacKenzie: By having to register it under the central system, thereby having to define it specifically, you get something different from what you bargained for under the provincial law. You would have more than a floating charge, but a specific charge because it was registered under the federal law, which would give you a specific right to that aircraft.

Senator Bourget: Do priorities enter into this?

Mr. MacKenzie: Yes, definitely.

Senator Flynn: They could.

Mr. MacKenzie: You cannot say that you register under this for information only. We are setting up a priority system whereby you are going to get paid if something happens and that is much more than an information system. It creates substantive rights, in effect.

Senator Riley: Again, I agree with Senator Flynn in that this would create a good deal of confusion. If a floating charge is registered under a corporate securities registration act and the corporation involved acquires an aircraft without informing its legal counsel, counsel is going to be blamed for not being aware of it. He was not given notice of it. It might be only a Piper Cub, or something like that, and because counsel is not advised there is not protection for the people who search the corporate securities registration registry.

Mr. MacKenzie: What I am saying is that you put in a provision whereby you can enforce and execute a specific document which you can register.

Senator Flynn: But you have to be aware of acquisitions.

Mr. MacKenzie: Yes, but I do not really think it has changed very much. That exists presently.

Senator Flynn: Yes, but now you are sure you will get it if you can find it.

Mr. MacKenzie: Yes.

Senator Flynn: But you could find it and discover that you have no right.

Mr. MacKenzie: Another area of concern to us in this legislation is that it seems to change the common law in connection with the right of retention by the repairman and that sort of thing.

Senator Riley: That is the mechanics' lien

Mr. MacKenzie: Yes, in the case of a mechanics' lien, if the movable property on which the repairs was done is not allowed out of the possession of the repairman, he has the right to be paid against any other party, registered or not. That gives him a first priority up to the extent of his repair bill. This legislation, by not dealing with it or by forcing the repairman to register his lien, will cause him to come behind all those who have mortgages and so on, which completely changes the law. If that is proposed, it should be spelled out so that we may be aware that it is taking place. As far as we are concerned, that will définitely be the effect of this legislation, which is a very serious change in the law.

Senator Riley: In my opinion there is a burden on legislators to protect those who provide services. In the case of a repair bill against an aircraft, it will be more costly and complex to register a lien under this particular legislation. It must be done by retaining counsel in the particular jurisdiction, who must then engage a correspondent in Ottawa. For a repairman or mechanic in modest circumstances who has a lien in the amount of $2,000 for services against an aircraft, it will be a very costly procedure and, in my opinion, slightly discriminatory. It is a very heavy burden on a mechanic who has the right to a lien for his services.

Mr. MacKenzie: We have discussed mechanics' and servicemen's liens, but you are quite correct.

Senator Riley: What is your opinion with respect to the protection of the repairman or mechanic?

Mr. MacKenzie: In my opinion we do not necessarily have to do anything. It is a common law right which should be allowed to remain so and if a person has such a right he holds on to the property until he is paid, which is the existing situation.

Senator Riley: But you must register that.

Mr. MacKenzie: It does not have to be registered under the law in Ontario.

Senator Flynn: If this legislation comes into force?

Mr. MacKenzie: Yes. Under the provisions of the personal property security legislation in Ontario, whenever a statutory lien, rather than a mechanics' lien, is applied the situation will not be changed by this legislation.

Senator Riley: Is a mechanics' lien good on a local basis within a province on the basis of this legislation?

Mr. MacKenzie: I am not going to answer that. It may be, or it may not be, which was the reply of the Minister of Justice in the House of Commons.

Senator Riley: That is my reason for saying that all provincial authorities should be asked for their opinion in respect to this. I know that the provincial authorities would be deeply conscious of the rights of a repairman in respect of his lien protection. He must file within a set number of days or his lien becomes invalid.

Senator Flynn: Under the provincial law.

Senator Riley: Under the provincial law. I believe it is 60 days for materials.

Mr. MacKenzie: It varies from province to province. In certain provinces even a mechanics' lien may be registered and if this is done properly there is no necessity to retain. It seems to me, however, that it is a rather important consideration to change the rights of such a person and force him to stack up behind many others behind whom he does not have to stack up now.

Senator Riley: Again I carry this discussion *ad absurdum*. When clearance must be obtained for underwriting during a period of, for instance, a postal strike and a particular individual has a right to a lien on an aircraft, he must send someone by air to Ottawa to register that lien if it must be filed within two or three days. If it were possible to file in his home jurisdiction, the claimant or his lawyer would simply go to the local registry office. It may involve procuring a courier service to file in Ottawa. This may sound ridiculous, but it has happened in the clearance of an underwriting or prospectus.

Mr. MacKenzie: Yes, there is no doubt that that is quite true.

Senator Riley: So there is a question of protection for the man, company or person who has the right of lien against the aircraft. In my opinion that is important and it is more important with respect to the unsophisticated type of repairman, for instance, who just comes to the conclusion that he can file a lien on that aircraft within two or three days prior to the expiration of his time for filing.

Mr. E. E. Doyle, Resident Counsel, Associates Acceptance Company Limited: Alternatively, if he does not become aware of his right and does not file, he is left with nothing and loses whatever right he had.

Senator Riley: Yes. Locally, he could simply go to the registry office or have his lawyer do so, and file the lien. I return to the point that we are going through a new ball game with respect to the postal service. It may be necessary to engage a courier to travel to Ottawa and deliver the lien to a correspondent for filing. It cannot be filed by mail because, again, we are in the postal service area. That is no reflection on the Post Office department, but we are living in a new world with respect to the transport of mail. That may not be serious, but it would be serious for the unsophisticated person who has supplied services to an aircraft and has this period for filing a lien. Does this legislation contain any provision that there is no time limit on the right to file a lien?

Mr. MacKenzie: That is correct; it may be filed at any time.

Senator Riley: But anyone purchasing the aircraft without notice of the lien is left unprotected, is he not?

Senator Flynn: Would you argue that a lien registered in that manner would be valid only if it were registered within the period provided in the provincial legislation, or would it be valid if it were filed or registered within five years, which I believe is the present provision?

Mr. MacKenzie: Yes, it is five years in this.

Senator Flynn: The mechanics' lien provides for 30 days.

Senator Riley: The aircraft could be bought and sold 10 times during that five years.

Mr. MacKenzie: That is why the right of retention in the mechanics' lien is provided. No one will buy or sell the property while the repairman holds it.

Senator Flynn: I believe the period for claiming would be extended to five years under this legislation.

Senator Riley: But if the aircraft were bought a year later and the lien was not valid until someone else had possession of it?

Senator Flynn: Agreed. On the other hand there is the other consequence, that most likely the right of the lien is extended to five years rather than 60 days for registration.

Senator Riley: Against a bona fide purchaser, without notice?

Senator Flynn: Not without notice, but if an aircraft were bought and the purchaser found that a personal claim was registered by a repairman two years after it became due, probably under this legislation it would have to be recognized, whereas under provincial law it would not be valid, because it would have been registered too late.

Senator Riley: Do you not consider that to be a problem?

Mr. MacKenzie: Yes, but, of course, being fair about it, I have to say that the provincial registration regulations are departing from the concept of a stated time.

Senator Riley: They are giving more protection?

Mr. MacKenzie: No, I mean a stated time within which to register. In other words, the time limit was established as what might be termed a fraud provision. It only creates problems, because if the registration is not made within the time limit, application must be made for delayed registration. The tendency, therefore, is to depart from that type of regulation. If there is no time limit in which to register and the aircraft is still there, it can be registered.

Senator Riley: But if the lien is registered against the aircraft and a finance company has seized it and sold it, does that lien follow the aircraft, even if it is registered two years after the seizure?

Mr. MacKenzie: No.

Senator Riley: That would be a real problem, in my opinion.

Mr. MacKenzie: That would be another argument for romoving the delay. A person with a security or lien interest must register it as soon as possible. Otherwise it may be taken away by someone else.

Senator Riley: The tendency on the part of the suppliers of the material or the services is to take every step they can to collect their money before a lien is filed.

Mr. MacKenzie: Yes.

Mr. Doyle: In those cases in which the 30 days' or 60 days' delay applies and when the supplier of the services is getting nowhere, he would be very wise to make sure that he files the lien at an early stage. He only has a limited amount of time and he will find time is running out.

Mr. MacKenzie: If he were to attempt to comply with this legislation, whether he thought he had a reasonable opportunity to collect or not, he would register as soon as he could.

Senator Riley: But that is a costly procedure for a person with a small claim.

Mr. MacKenzie: It may not be. We do not know how exotic the department will make these forms.

Senator Riley: What about the Department of National Revenue Act?

Mr. MacKenzie: I do not know. You have left me there, sir.

Senator Riley: For taxation,excise tax, customs and that type of debt. There would be a priority exercised, as there always has been. Does that follow the commodity?

Senator Flynn: No, it is only in case of bankruptcy that you would have a problem, but they would come after registered creditors.

Senator Riley: That is not the case today, though. The priority is taken now.

Mr. MacKenzie: It is in the case of real property.

Senator Flynn: Under the Bankruptcy Act the guaranteed creditor comes ahead, but after that there is the privilege of the Minister of National Revenue.

Mr. MacKenzie: Yes, that is right. The other area of concern to us has to do with the provisions for trying to enforce a security. That is, seizure and sale provisions. They seem to be unnecessarily complicated and make it necessary to go to too many courts in order to be able to deal with it, in the case of a commercial aircraft. Before you can seize and sell an aircraft, you must go to a superior court—I assume that would be a provincial court—and be authorized to take possession of the aircraft.

Having obtained that from the provincial court, you must go to the federal court. They say, "Okay, you may seize." We now have two courts to go to. The federal court could then say, "Yes, but before you can sell that you must show what reasonable steps you took to collect."

While the act provides for a delay of six weeks before seizure and sale—I do not think anyone will complain about a period of six weeks—it looks as if it will take six months to get to the position where you can deal with an aircraft in a default situation.

Senator Riley: In the meantime the aircraft is in your possession. You have seized it.

Mr. MacKenzie: No. We are holding it for six weeks; but to get to the place where we can seize, no, it is not in our possession.

Senator Riley: But all you need is a pilot and a key. Is that not the procedure with regard to a finance company—to get the key to a car and drive it away? They take legal title to the aircraft.

Mr. MacKenzie: I do not think many of us are doing that, quite frankly.

Mr. Doyle: The facts are right there. No person may seize.

Mr. MacKenzie: You cannot take possession until you have gone to those two courts.

Senator Riley: Presently you can, under the provincial jurisdiction. You can walk in and say, "I am from the garage—

Mr. MacKenzie: No one is going to go out on their own and grab an aircraft. That is too troublesome. You will have bailiffs and you will do it properly. It is not like taking a fridge, and so on. This is a different kind of situation. Nevertheless, you cannot do any of those things. We are talking about commercial aircraft. You have to wait all this time.

While all this is happening and you are waiting, charges are running up. You are more into it. Someone has to pay more. You are not really doing your debtor or creditor any good, because it is costing more. If the aircraft was worth $1,000 today, and it is still worth $1,000 six months from now, the expenses in that invervening period may be $100, which you are not going to recover; so you have to recover it from the debtor after you have disposed of the aircraft. It seems to me that the provisions for seizure and sale—I will not go into them in detail—are unnecessarily complicated. They do not have to be so complicated, and they could make it much easier for the parties to proceed to crystalize their security.

There are certainly protections in provincial law to ensure that the best price, and so on, is obtained, without going through the procedure that is set forth here.

Senator Riley: There are many loopholes.

Mr. MacKenzie: The other question is that, having got the aircraft and proceeded to sell, if you were a second mortgagee you would have to pay off the first mortgagee. There is no provision here whereby you can go to the first mortgagee and say, "I am going to exercise my security. I am going to keep up your debt, I am going to find a buyer, and the buyer will buy from me and assume your first mortgage."

This is done very often in real property, and very often with respect to moveable property. Because of the very strict wording of this bill, that sort of arrangement between parties will not be possible.

Senator Riley: Is it not the present policy of the finance companies to demand that the buyer's encumbrance be seconded to theirs? To pick a name out of the air, if the Industrial Development Bank has first mortgage on the assets of a company, and the Canadian Acceptance Corporation has to do some refinancing, is it not the policy of the finance companies to require that the prior encumbrance be seconded to their security?

M. MacKenzie: It may be, but not necessarily.

Senator Riley: But is that not the policy?

Mr. MacKenzie: I would say no. You cannot say that is a policy. There is no policy. In any secured transaction with parties, the credit grantors, whoever they may be—they may be the IDB, or ourselves, or another bank—are putting so much money in there. It is agreed that we are going to put so much money in there, and we are going to work out what our priority position is with respect to different properties.

My point is that if you have a first and second mortgage on an aircraft, and the first mortgage is $50,000, I am owed $10,000, the aircraft is worth, shall we say, $60,000 . . .

The Chairman: There is not much equity left.

Senator Riley: Not much aircraft, either.

Mr. MacKenzie: I am suggesting that if I could find a buyer who is prepared to assume the first mortgage, rather than coming up with $60,000, which he would have to if the first mortgagee was prepared to leave his mortgage in place and accept the new purchaser and let it go ahead, the new purchaser could get the aircraft for $10,000 and assume the first mortgage. Under this bill, that is not possible, because it is very strictly provided. I do not have the exact clause, but it is strictly provided that this would not be possible. We think that is too limiting in the real world.

Finally, we come to the provisions regarding the five-year renewal. We think the period should be longer than five years.

Senator Riley: What clause is that?

Mr. MacKenzie: It is clause 12, which also seems complicated. I do not see why it cannot simply be a discharge or a statement by a secured party that he no longer has any interest, cannot be registered, without this business of making application for renewal, and so on. However, that is beside the point. The fact of the matter is, it must be renewed within five years, under clause 13(1). We would suggest that it be extended in the case of aircraft, because in many of the transactions, particularly in connection with commercial airlines, you are talking about much larger amounts, and they are running for longer periods than five years. A renewal merely complicates the thing. Someone has to remember to renew and go and renew.

My other comment is that if you miss renewing, you are right out; there is no provision for making application for a late filing or late renewal, subject to whatever your position may be.

Senator Riley: The same thing applies to conditional sales.

Mr. MacKenzie: That is right. There is no flexibility here, and we would suggest a kind of flexibility. The transitional provisions cause us the same kind of problems as the constitutional problems and the provincial question. I was interested, when Mr. Shields was speaking, to hear him say that the intention was that all security interest with respect to aircraft would be regulated under this act over a period of time.

We have looked at the relevant provisions of clauses 17 and 7. The way we read those clauses, it would appear that until such time as a provincial lien or right, registered validly under a provincial registration scheme, expired or was paid out, it would still have this position of priority, despite the coming into force of this act.

Therefore when we are dealing with ten-year things, if this is going to be the governing act, everything should be under this, and we should not have to worry about the priorities set up in province A, when in other provinces it is under the federal legislation. We would like to see it clearly spelled out that within a certain period of time, with respect to aircraft, and assuming the central registry is going to be the system, that everything be brought under the system, and not go along for 10 or 12 years with some

complementary system where you never know where you sit with respect to your priority position.

Senator Riley: To follow your line of reasoning, there is all the more reason to follow Senator Flynn's suggestion that the provinces be consulted.

Senator Flynn: Section 17 would mean that a floating charge created before coming into force of this act would remain valid, without any registration, and could remain valid for years—for 10 or 15 years. That is what section 17 means.

Mr. MacKenzie: You could also read sections 17 and 7 to mean that within a period of three months—because they talk about a delay for the commencement of section 7—all provincial registrations have to be registered in the central system, otherwise they are dead. I cannot read it that way. If you do not read it that way, as my friend said, what is the purpose of section 7?

Senator Flynn: My interpretation of section 17 is that before the coming into force of section 7, all those who have rights under provincial law keep those rights.

Senator Riley: Even renewal rights?

Senator Flynn: Yes. They do not have to register them. They just go on.

Mr. MacKenzie: If you read section 17 in its broadest aspect, you do not have to do anything. As I say, this could go on for a long time, with a double complementary registration.

Mr. Hopkins: May I point out gratuitously that there may be some limit on what can be done, bearing in mind the terms of the international convention? We may be straitjacketed to some extent in that regard.

Mr. MacKenzie: One would think that for the international situation they would want one law to look at.

Senator Flynn: I think we are all agreed that if we had one registration system it would be perfect. Probably if you had that,the act would not make it optional to register the aircraft. It would be compulsory, and everyone would know where they stood. But in going at it in this way—in a rather sneaky way—it will simply create utter confusion.

Senator Riley: 96 the acts of the other parties are not uniform, it will lead to more confusion.

Mr. MacKenzie: There is no doubt that the American act is different from the English act, and the proposed Canadian act is different from both of them. All that the convention stipulates is that you must do certain things. The question is how do you go about doing the same thing? I am not an international lawyer. I merely read the convention, and see what we have done here and what the United States has done. It seems to me that once you comply with certain things, you can do whatever you want.

Mr. Hopkins: There is considerable flexibility.

Senator Riley: If you are advising a client on his lien rights in respect to registration of aircraft in Canada, you would have to be familiar with the acts of all the other countries, in the case of a transfer.

Mr. MacKenzie: If we know an aircraft is coming in from the United States, we check with Oklahoma, where their central registry is located, and rely upon that.

Senator Flynn: You always have to consult lawyers in another jurisdiction, in any event.

The Chairman: Mr. Jiles, have you any further comments to make?

Mr. Jiles: Only that I fully support Mr. MacKenzie's comments, Mr. Chairman.

The Chairman: Do you have any comments, Mr. Doyle?

Mr. Doyle: No, Mr. Chairman.

The Chairman: Are there any further questions from members of the committee?

Senator Flynn: Do we have other witnesses, Mr. Chairman?

The Chairman: No.

Senator Riley: As I understand it, Mr. Chairman, we are not going to approve this bill today, but rather we are going to wait and reflect upon the opinions of the provincial authorities?

The Chairman: We are going to write to the provincial attorneys general concerning the effect of this legislation as it relates to present provincial laws, and we are going to enclose with that letter a copy of the brief submitted by the Federated Council of Sales Finance Companies, a copy of the committee proceedings of this morning, and a copy of the bill.

Senator Flynn: In addition to that, Mr. Chairman, I think the Department of Justice should look into the discussion that took place this morning with respect to the matters raised by the witnesses. There appear to be some practical problems which might arise with some of the provisions, and perhaps these could be eliminated by way of amendments. I feel the views expressed here this morning, outside of the problem of the constitutionality of this legislation, would be worth looking into by the departmental officials of both the Department of Justice and the Minister of Transport. Perhaps Mr. Shields could look into these matters and give us his views when the committee reconvenes.

Senator Riley: You have certain reservations about some of the provisions of the bill, Mr. MacKenzie?

Mr. MacKenzie: Yes.

The Chairman: Those reservations are contained in the Proceedings of the Committee.

Senator Riley: Since this bill was introduced in the Senate, Mr. Mackenzie would have to carry those reservations over to the House of Commons committee, and it would be far better if some of the points raised could at least be partially resolved before it reaches that stage. This might necessitate his appearing again before the committee as a witness.

The Chairman: Are you prepared to do so?

Mr. MacKenzie: Yes, Mr. Chairman. The brief is perhaps more lucid than I have been in setting out the objections. I was simply trying to summarize the points we made in our brief.

The Chairman: Mr. Hopkins, with the assistance of the Federated Council of Sales Finance Companies, will prepare a letter to be sent to the provincial attorneys general

along with a copy of the committee proceedings, a copy of the brief submitted by the Federated Council of Sales Finance Companies, and a copy of the bill itself.

Senator Graham: On a point of order, Mr. Chairman, are we not asking legal counsel from the Ministry of Transport to draft the letter?

Senator Flynn: No, this is something that should be done by the committee. The Ministry of Transport has been rather reluctant to do so.

Senator Riley: The Ministry of Transport drafted the bill.

Mr. MacKenzie: Perhaps I could interject something, Mr. Chairman. Most of the provincial governments, in their security systems, are moving towards a central registry system. Five or six of the provinces have a central registry system presently, most of them being computerized. As computers can be tied into other computers, it may be worthwhile exploring that aspect. This might answer the complaint about people having to come to Ottawa to do things. If they could go through a tied-in provincial computer that would give them the information they are requesting, that problem would be eliminated.

Senator Riley: Or tied into a computer bank in the United States somewhere.

Mr. MacKenzie: The whole problem lies in the number of places one has to go to search for information before advancing a dollar. At the present time you have to go to five or six different places in each province, plus the federal government information bank, and so forth.

The Chairman: If there is nothing further, we will adjourn.

The Committee adjourned.

Published under authority of the Senate by the Queen's Printer for Canada

Available from Information Canada, Ottawa, Canada.

LIBRARY
UNIVERSITY OF TORONTO

FIRST SESSION—THIRTIETH PARLIAMENT
1974

THE SENATE OF CANADA

PROCEEDINGS OF THE

STANDING SENATE COMMITTEE ON

TRANSPORT AND COMMUNICATIONS

The Honourable J. CAMPBELL HAIG, *Chairman*

Issue No. 3

THURSDAY, NOVEMBER 28, 1974

First Proceedings on the examination of the Television Program entitled:

"Les Beaux Dimanches"

(Witnesses: See Minutes of Proceedings)

28218—1

STANDING SENATE COMMITTEE ON
TRANSPORT AND COMMUNICATIONS

The Honourable J. Campbell Haig, *Chairman*

The Honourable Maurice Bourget, *Deputy Chairman*

The Honourable Senators:

Blois	Lawson
Bourget	McElman
Burchill	Molgat
Davey	O'Leary
Denis	*Perrault
Eudes	Petten
*Flynn	Prowse
Forsey	Riley
Graham	Smith
Haig	Sparrow
Langlois	Welch—(20)

(Quorum 5)

**Ex officio members*

Order of Reference

Extract from the Minutes of the Proceedings of the Senate, October 31, 1974:

"The Honourable Senator Langlois moved, seconded by the Honourable Senator Denis, P.C.:

That the Standing Senate Committee on Transport and Communications be authorized to examine and report upon the matter of the program entitled "Les beaux dimanches", televised on 28th April, 1974, on the French network of the Canadian Broadcasting Corporation.

After debate, and—
The question being put on the motion, it was—
Resolved in the affirmative."

Robert Fortier,
Clerk of the Senate.

28218 — 2

Minutes of Proceedings

Thursday, November 28, 1974.

Pursuant to adjournment and notice, the Standing Senate Committee on Transport and Communications met this day at 9.30 a.m.

Present: The Honourable Senators Haig (*Chairman*), Bourget, Denis, Flynn, Graham, Langlois, Riley, Smith and Sparrow. (9)

Present but not of the Committee: The Honourable Senators Asselin, Barrow, Beaubien, Desruisseaux, Fournier (*de Lanaudière*) Gélinas, Michaud, Molson, Norrie, Riley and Robichaud. (11)

In attendance: Mr. E. R. Hopkins, Law Clerk and Parliamentary Counsel.

At the request of the Honourable Senator Langlois, the Clerk of the Committee was asked to make a report on all the preliminary steps taken in order to expedite this meeting.

The Committee proceeded to the examination of the Television Program entitled: "Les Beaux Dimanches", televised on April 28th, 1974, on the French network of the Canadian Broadcasting Corporation.

After preliminary discussion the film was viewed.

The Committee then resumed its examination of the Program.

Witnesses:

Canadian Broadcasting Corporation:

Mr. Laurent Picard,
President;

Mr. Raymond David,
Vice-President and General Manager,
French Services Division.

Also present but not heard:

Mr. Ron C. Fraser,
Vice-President,
Corporate Affairs,
Assistant to the President;

Mr. Don MacPherson,
Vice-President and General Manager,
English Services Division;

Mr. Pierre DesRoches,
Vice-President, Planning;

Mr. Denis Harvey,
Deputy Assistant General Manager,
English Services Division;

Mr. Jean-Marie Dugas,
Director of French Television;

Mr. Marc Thibault,
Director of Information Programs,
French Services Division;

Mr. Jacques Alleyn,
General Counsel.

At 11.40 a.m. the Committee adjourned to the call of the Chairman.

ATTEST:

Mrs. Aline Pritchard,
Clerk of the Committee.

The Standing Senate Committee on Transport and Communications

Evidence

Ottawa, Thursday, November 28, 1974.

The Standing Senate Committee on Transport and Communications met this day at 9.30 a.m. to examine and report upon the program entitled «Les Beaux Dimanches», televised on April 28, 1974 on the French network of the Canadian Broadcasting Corporation.

Senator J. Campbell Haig (*Chairman*) in the Chair.

The Chairman: Well, honourable senators, it is 9:31 according to CBC time this morning, so we will proceed with our business. I will start the proceedings by asking the technicians to put the show on the road.

Senator Langlois: Mr. Chairman, before this presentation begins I would like to ask the clerk to report to the committee on the requests that we have made to the CBC in connection with this morning's meeting and as to the responses received from them.

The Clerk of the Committee: I did not anticipate this request, Mr. Chairman, but I will do my best. I have not the file with me, so I shall have to do this from memory.

Some two weeks ago, I would say, I received a call from Senator Langlois, whose motion this was originally, asking me to get in touch with the CBC and the CRTC, to ask Mr. Picard, Mr. Juneau and other officials, if needed, to appear before the committee to discuss the subject matter of the motion. I immediately started processing this request with Mr. Townsend, with whom I communicated all through, Mr. Picard being away at the time. With considerable trouble, I imagine, they managed to get him to consent to come. At that time it was decided that Mr. Picard would appear first, and so we dealt strictly with the CBC from then on.

First of all our request was to have the videotape with an English sound track so that the English-speaking senators could see the film as it was broadcasted but hear it in English. After numerous phone calls the CBC informed me that this was not possible because it would be not only very expensive but would take a very long time to achieve. It would in fact be extremely time-consuming. This information was relayed to Senator Langlois. In fact, every development was immediately relayed to Senator Langlois, with an account of the difficulties that presented themselves from a technical point of view. From then on the dubbing was abandoned, and we started to work on another approach. The CBC said that as an alternative we could have the text translated, and so we proceeded to work along those lines.

Last Friday we had the technicians here to go through the arrangements with Black Rod to make sure everything would go well. When I returned to my office at noon, Mr. Townsend phoned me and told me that after consultation with their lawyers it had been decided that they could not translate the text because the matter of copyright had come up and the text, in fact, was the property of the authors and could not be used in such a fashion.

I phoned Senator Langlois in Quebec City on Monday morning and informed him of this latest development. I must say that when I relayed these various decisions they were always met with a certain amount of dissatisfaction, and certainly not happiness. Senator Langlois did not like this, and said that he doubted very much whether the whole committee would like it, but that that was that. So the arrangements were made. I asked for the text in French, which I received. I had it copied, but our problem was to send it to the interpreters, because by then it was obvious that this translation would have to be done by the simultaneous interpreters. The interpreters have had the text for two days, and they have gone to CBOFT, through the arrangements made by Mr. Townsend, so that they could have rehearsals. They have looked at the film and have tried to synchronize their interpretation as well as they could, and this is what will be done today. There was no other way to do it.

Senator Desruisseaux: The original text was in French, though?

Mrs. Pritchard: Yes.

Senator Desruisseaux: And this we will be viewing?

Mrs. Pritchard: The French-speaking senators will have no trouble at all; they will see the film and hear the original French version. It is the English-speaking senators who will have the trouble because they will have to use the simultaneous interpretation system.

Senator Fournier (de Lanaudière): Who is the author of the text? The names, please?

[*Translation*]

Mr. Raymond David, Vice-Chairman and General Manager, French Services Division of CBC: Well, five authors participated in the writing of this text; they are: André Dubois, Marc Gélinas, Serge Grenier, Luc Plamondon, a company called "Le Grand Cirque Ordinaire" and Michel Tremblay.

There were several authors because it was a series of sketches, some written in collaboration; naturally, others were written by only one person. However, in that kind of programs, very often one or the other adds or revises something.

Senator Langlois: And gives inspiration?

Mr. David: Even in the credit titles, Senator, all texts were said to have been written by the authors whose names I have just mentioned.

Senator Langlois: Are some of those full-time employees of CBC?

Mr. David: No, they are all members of La Société des auteurs.

Senator Langlois: Does CBC have contracts with each one of them?

Mr. David: Each contracts are signed on each occasion. So . . .

Senator Langlois: Are these individual contracts for each author?

Mr. David: Yes.

Senator Fournier: How much did the whole program cost?

Mr. David: I'm sorry, but I don't have those figures here.

Senator Fournier: That is important.

Mr. David: It cost what it usually does for such shows. As you know, there are special programs which need electronic mixing, many rehearsals and a production mixing. I could then send you those figures.

Senator Langlois: Mr. Chairman, I have here a copy of the text of this program and, on the front page, I can read the following sentence:

Copyright: CBC, 1974 for private use,
reproduction forbidden.

Can someone tell me if this is written in the individual agreements between CBC and each author?

Mr. David: Yes, we usually buy the rights to one program. Then, if there is a rerun, we don't have to pay an additional fee.

Senator Desruisseaux: Do you have exclusive rights?

Mr. David: Yes indeed, but we cannot use the material outside the program.

Senator Fournier: For today's replay, will you have to pay an additional fee?

Mr. Laurent Picard, Chairman of CBC: Well, I won't be the one insisting upon it.

Senator Denis: Was the program reviewed before being televised?

Mr. David: Going back to the Senator's question, I must say that we have no rights for private representations. We have never had to pay additional fees except for a public rerun.

Senator Bourget: Mr. Picard, how much did you pay for these rights?

Mr. Picard: Monsieur le président, j'aimerais s'il vous plaît changer le cours des questions. Je pense que cela a été la pratique . . . I think it has perhaps been the practice, in the Committee on Public accounts, the Committee on Transport and the Senate, not to publicly reveal the cost figures. For the sake of competition and other reasons, we have always offered—as you know, I haven't been at CBC for a very long time so it may be possible that I am mistaken—but we have always suggested that a committee or sub-committee reviews "*in camera*", the figures that we would then submit. Both the Senate and the House Committees have usually accepted this rule of not asking for precise expenditures and salaries.

Senator Denis: Why wouldn't you want to reveal the exact amounts?

Mr. Picard: For many reasons. It is usually that all information concerns an individual or problems which are under negotiations; for example, we are often asked about union negotiations. Then, it is the usual parliamentary practice—even though I am not very well experienced—not to ask questions about subjects that could prejudice someone or that could compete with private stations. Generally, we are heard "*in camera*" by a sub-committee where we open all our books.

Senator Denis: What kind of competition can be created by giving some? Everybody knows CBC declares surpluses or deficits. But of how much? If there is a deficit of 200 or 300 million dollars, what kind of competition does it create for other channels?

Mr. Picard: Listen, there is the fact that an artist is part of the labour force and that he has many chances of finding work at Télé-Métropole, in a theatre, or for other organizations. This is what I mean by competition. If you insist, we will give them to you but we generally do so "*in camera*".

Senator Bourget: Mr. Chairman, this question was discussed some time ago concerning the salary of the Chairman of the Canadian National. The competition is a lot stronger than in the case of our artists but still it was disclosed.

I don't see why members of the Senate and the House of Commons cannot insist to know the salary paid to the people writing such texts for "Les Beaux Dimanches" program.

Mr. Picard: First, the salary of the Chairman of CBC is publicly known; I can tell you my salary if you want. But it is a tradition. If the committee insists, it has the right to obtain them, but it was a general agreement to have them given "*in camera*". As I have already mentioned, however, if a Parliamentary Committee wants to see them, they will be shown. It is not a fact of law, the committee has a right to know. It was rather a case of traditional agreement.

Senator Denis: Was this show reviewed and authorized before being shown? Was it first seen by CBC officials?

Mr. David: Yes. For this kind of show, the head of the department—in this case Mr. Jacques Blouin, head of the varities department—usually reviews the text and then, if in doubt, he can ask the Programs Directorate and have certain things suppressed or added. There is also an aesthetic judgment to make, a very discriminated one.

Senator Desruisseaux: What was the result of all this?

Mr. David: I can't tell you in detail what changes were brought in, but it is naturally easier for a soap opera as one knows more or less the plot; the review is more radical. But such shows are the responsibility of the head of the department who, in doubt, can ask for the opinion of the Program Directorate.

Senator Desruisseaux: What were his conclusions?

Mr. David: In this case, it was accepted without changes.

Senator Denis: Is Mr. Blouin the only one who authorized it or were other officials also involved?

Mr. David: I think it was only the head of the department.

Senator Denis: So, nobody else at CBC saw this show before it was televised?

Mr. David: I, at least, didn't see it. I cannot watch all shows before they are shown.

Senator Denis: Was it live?

Mr. David: No, it was an electronic mixing recorded on magnetoscopic tapes.

Senator Denis: Do you mean Mr. Blouin is the only person who reviewed the show?

Mr. David: I can't tell you, maybe he asked the Programs Directorate for advice but in this case I don't know. I remember texts for "Les Couche Tard" reached me—and I remember them well—because in some cases satire was too harsh. Then, they would be shown to me but they usually are not.

As I have already said, consultation is decided upon by the person responsible. If that person sees nothing contrary to our program policy, he decides by himself not to consult with the Programs Directorate. He figures that with the corrections he can make, the show will be in accordance with the usual policy for those kinds of programs. That's what happened here.

Senator Langlois: Mr. David, you have just mentioned a program policy . . .

The Chairman: Before any member of the committee or anybody else here speaks, would they kindly identify themselves for the benefit of the rest of us and the interpreters?

[*Text*]

Senator Smith: On a point of order. Might I ask you, Mr. Chairman, whether it would be possible for someone to give those of us who did not happen to be present at the time this matter was discussed in the chamber a short background of the general concept of the program and what the general complaint was. We are in the middle of a sandwich and we do not know what is on both sides of it.

Senator Molson: Read *Hansard*.

Senator Denis: You are going to see it.

The Chairman: This question would come better after we see the film.

Senator Desruisseaux: Before we do that, may I say that I am not too happy with the answer given by Mr. David as to what acceptance was made of this before. I am not too sure whether I understood him accurately, but I thought he said he was not sure what had happened.

[*Translation*]

Mr. David: What I am telling you is that the departmental head for this type of broadcast receives the texts and discusses them with the producers. At times, he finds his judgment safe enough that he does not refer to the general programming management.

Senator Desruisseaux: Mr. David, do you refer only to the programme presently under discussion; what happened?

Mr. David: I cannot tell you if programmes management was consulted, I was not there.

Senator Desruisseaux: If you cannot say, who can?

Mr. David: It would be the Programming Director.

Senator Fournier: Who was the producer?

Mr. David: Jean Bissonette.

Senator Langlois: Mr. David, when I was interrupted a while ago, with reason, by the Chairman, I was referring to your remark concerning the programming policy, as this sketch was accepted right away by the Corporation, through your departmental head, who, apparently, did not raise any questions, did not express any doubt on the value of this programme, should I conclude that this programme, in your opinion, fits into your programming policy?

Mr. David: Well, as you know, there is a long tradition of satirical broadcasts with the CBC since the broacasting of programmes like *Carte blanche, Chez Miville* and *Les couches-tard,* it is a type of broadcast used in all radio and televisionn broadcasts. On the English side, you have the same type of broadcasts. Therefore, the programming policy allows satirical and sarcastic programmes and it is a bit the same as cartooning in our newspapers. It is therefore in complete agreement with programming policies and traditions.

Senator Fournier: Has the *Parti Québécois* been the subject of a satirical broadcast?

Mr. David: Certainly, Senator.

Senator Langlois: On the English network. Now, Mr. David, you mentioned the producer, in one of your answers, can you tell the committee if it is when this contract was signed with the authors of the sketch that your producer really gave his input by telling these authors what kind of programme he wanted to produce?

Mr. David: In the first place, the main idea of this programme was to show-case, of course, one of the most popular comedienne in French Canada, Denise Filiatreault. It was a question of showing all the talents of this gifted star. As you know, she is a singer, dancer and comedienne.

Senator Langlois: That includes political talents . . .

Mr. David: Indeed, I believe that satire often touches politics, society or culture.

Senator Langlois: That could touch the political beliefs of Denise Filiatreault.

Mr. David: I do not know what her political beliefs are.

Senator Bourget: She stated them publicly at a political meeting in Montreal, Mr. David, please note that, in our work, we do not try to discover the political beliefs of the invited artists. We are trying to find out if they ply their trade well. Thus it was a matter of knowing if we were banking on a very good comedian. Consequently when I was asked what was the intent of the programme, I stated that it was to show-case Denise Filiatreault under all the aspects of her career. Obviously, this included many subjects, including "Aurore l'enfant martyre" and, more obviously, a satire on the Queen and also a satire on a visit with the Governor General.

Senator Denis: Speaking of satire, do you not think that this was "a bit much"?

Senator Desruisseaux: Mr. David, do you accept the responsibility for the programme we are going to see?

Mr. David: Yes, Senator.

Senator Bourget: Do you believe, Mr. David, that the effect of this programme was the promotion of national unity?

[*Text*]

Mr. Picard: Mr. Chairman, I would like to make two statements, one on the events of the last two weeks and the other concerning the question of policy, which might better be discussed after you have viewed the program, since at that time you would have some background for your questioning.

If I may allude to Mrs. Pritchard's summary of the situation with respect to the two weeks leading to this meeting, although I am sure Senator Langlois had no intention of creating a bad image for the CBC, there might have been an impression that the CBC has in one way or another tried to delay the proceedings, change them or otherwise embarrass the Senate by its decision not to have a dubbing or a text but to insist on a simultaneous translation. I believe Mrs. Pritchard underscored the fact that we did try to make the best possible job of the simultaneous translation we could in the time available. Actually, I am glad Senator Langlois raised the point, because in the light of my response to it honourable senators might have a better understanding of the frustrations involved in running the corporation. The point is, honourable senators, that there is a legal reason for our not using either dubbing or text but for insisting upon a simultaneous translation. We have our legal adviser here; perhaps the legal adviser of the committee would disagree with him, but in the opinion of our legal adviser the reason why we cannot have a dubbing or a text is that it would be an infringement of copyright. It would be against the copyright law of the country and the international copyright law—laws which I understand have been passed by Parliament.

I should like to make quite clear that it was not in the minds of those in the CBC to delay, hamper or confuse the situation with respect to presenting to the senators the best possible translation and presentation of the French text. I do not know if you wish to discuss that point, but I consider it important. Knowing only too well our mistakes and sins, Mr. Chairman, I should not like the discussion to start with the belief that the CBC has in any way tried to hamper the presentation of this text.

Senator Langlois: Since my name has been mentioned in these last remarks of Mr. Picard, Mr. Chairman, I should like to say at once that I had no intention whatsoever of embarrassing the CBC. Indeed, I was merely acting under your orders, Mr. Chairman. You asked me to obtain certain material from the CBC for this meeting this morning. I passed that message along to Mrs. Pritchard who was subsequently in contact with the CBC authorities. The furthest thing from my mind was any idea of embarrassing anyone at all. I was merely trying to obtain as much information for the committee this morning as possible.

[*Translation*]

Senator Denis: How much would the copyrights have cost?

Mr. Picard: It isn't only a matter of—maybe I could ask our legal counsel to speak in a while—it is not only a matter of copyrights. It is that in the case of copyrights, they prevent any change in the text, and there is also the translation of a humoristic text or other.

Senator Denis: If you offer to pay them, do you think they are going to refuse.

Mr. Picard: They did several times, and I can give you examples.

Senator Fournier: Does the text become the property of the C.B.C.?

Mr. Picard: The French text, as it is written. For instance, if a group would like to have a translation, let's say into English or Italian, it is not the property of the C.B.C. It is the strict and absolute property of its authors. Now, I don't know whether you wish to hear our legal counsel on this matter, but we are not free to do that.

Senator Desruisseaux: Mr. Picard, I don't think it is necessary to hear the legal counsel on this point, but the C.B.C. as such, has the right to examine and discuss the text beforehand.

Mr. Picard: Definitely, and Mr. David has said yes. He agrees.

[*Text*]

The Chairman: Are there any further questions?

Senator Desruisseaux: I would add one more comment, if I may, Mr. Chairman, about what was said by Mr. David in connection with the—

[*Translation*]

regarding the norms you have developed to influence the choice of programs, as I understand it, Mr. David, you have those norms; is it possible to obtain a copy? Secondly, the general policy of the government channels where programs are concerned, their acceptance, or the program policy has been repeatedly mentioned here. Would it be possible to obtain a copy of these documents dealing with the program policy you follow?

Mr. David: Senator, we have consolidated program policies in various operations, and we have here a book like the one here, which is called "Program Policy". It is a book written for producers, journalists, and senior officers. You have there the various programs which can be broadcast and the commercial regulations. I see, for example, regarding information programs and the commercial implication of information, that it is a matter of good taste. Everything is prepared by the management of CBC for both networks, the head office, to be submitted later to the Board of directors of the CBC.

Senator Desruisseaux: I do not seek personally to obtain explanations on commercial programs, but simply, the kind of programming such as: "*Les beaux dimanches*", the others which are accepted and which may be discussed. It is about those that we are interested in the guidelines.

Mr. David: Obviously, they are general guidelines, and each case is examined as it arises. There are plays which it is forbidden to broadcast. There are movies which we forbid to show, for instance, depending on the hour, the

area, but program policies are definitely written in the book I am showing you here.

Senator Desruisseaux: I have a feeling it would be useful to have it, Mr. David.

Senator Fournier: I would like to ask, either the legal counsel or Mr. David, a question. Does the legislation which governs the operations of the CBC prohibit the publication of the costs we were inquiring about a while ago?

Mr. David: I think Mr. Picard or the legal counsel could answer this question, Senator.

Senator Fournier: Then we ask them to.

Mr. Picard: Well, listen Senator Fournier, I will try to explain it to you, First, the Committee obviously has every right to ask this information and the CBC will comply. Traditionally, a Committee sitting *in camera* can examine those figures and report them. This Committee has the authority to get these figures. Therefore, if you demand them, we are going to give them to you but I think it goes a little against the usual practice.

Senator Flynn: In the present case, there are no objections?

Mr. Picard: Yes, I think, because for these programs, artists, writers, etc. receive salaries, and they do not work only for the CBC.

Senator Fournier: We are right on the elections market, not now, but before, when there was a rather stiff competition, and public accounts report to the last penny all the monies received from the government.

Mr. Picard: Now, listen, senator Fournier, senator Flynn, I do not wish to criticize; if the Committee requires the figures, you will get them, if you require them publicly, you will get them publicly.

Senator Flynn: Before making a decision, I would like to know whether in a particular case, you see any objection? You say it is against the general policy to reveal those figures, but supposing we would ask the total figure of the production cost of this program, there would be no objection to reveal the salaries or the fees paid to the performers?

Mr. Picard: No. Listen, senator, there again, the CBC does not object to it, the fact is that it is a long tradition. In a committee, it is done under the cover of a sub-committee, *in camera*. It is the individual cases which present problems. If, for instance, you ask for general figures, this as a rule, does not involve any problem. But there again, I wish to say that we do not object to your requesting them, we are referring to the tradition, but if you ask for the figures you will get them.

Senator Flynn: I understand your answer. As far as the total cost of this program is concerned, you do not see any objection to reveal it to the committee?

Mr. Picard: No, I have said the average cost of all *"Les beaux dimanches"*. I would rather not give them individually. However, if you ask it, we can give it to you.

Senator Desruisseaux: Mr. Picard, I think it is obvious, several members of the committee have spoken along the same line, as have those who are not members of the committee,—I myself am not a member—but we would still like to study those figures in this particular case. Personally, I think our discussions of those cases are not a waste of time, but such discussions should still justify, somehow, the attitude we adopt. We wish to clarify completely this question by going the whole hog.

Mr. Picard: Senator Desruisseaux, I have no authority to ask it except by pointing out the long tradition which exists. What I am asking you, is to be able to give the cost privately to all the members of the committee, and not publicly. That is all I am asking you.

[*Text*]

Senator Beaubien: Mr. Chairman, it seems to me that the committee decides for itself what its rules are and what its long traditions are. We also decide what questions we want to ask. I do not think the witness should sit there and tell us what our rules are or what our long traditions are. We are asking what he paid for this, and we want to know.

[*Translation*]

Senator Bourget: I think, Mr. Chairman, that senator Flynn's suggestion would avoid the drawbacks Mr. Picard has mentioned. Personally, I would accept the total cost of the production, unless other colleagues request more details. Personally, I would accept that you give us the total cost of this production.

Mr. Picard: Privately, of course.

Senator Bourget: Privately.

Senator Langlois: Well, not only the total cost, I think Mr. Picard was ready to give us the cost of the contract.

Mr. Picard: Privately, yes.

Senator Langlois: I would be satisfied with that.

Mr. Picard: Very well.

[*Text*]

The Chairman: I shall take another chance in asking if there are any more questions.

[*Translation*]

Senator Denis: Going back to the acceptance of various shows, what are your powers, as president, and your responsibilities? Do you have any, and which are they?

Mr. Picard: The president's responsibilities, as you know, are very general.

Senator Denis: You say very general?

Mr. Picard: Very general. He is responsible for the management of the CBC. It is obvious that neither the president of the CBC, nor the vice-president, can see all the programs which are produced; we produce 60,000 hours a year. If need be, it may happen that they ask our opinion on important matters. We have legal counsels, and we have network vice-presidents. It is a decentralized system and the president and the vice-president may be consulted occasionally.

Senator Denis: Were you aware of this particular show before its production?

Mr. Picard: Not the show itself, no.

Senator Denis: Do those who are responsible for accepting those shows report to you?

Mr. Picard: Listen Senator, I go back to Mr. David's statement when he said that decisions are taken at some levels. If somebody is asking questions, he must go to a higher level, either talk to Mr. David, and in some cases, talk to me.

Senator Denis: Mr. David never communicates with you?

Mr. Picard: Occasionally, if there are questions, he communicates with me. But, we leave those who are responsible for programming to make their own decisions.

Senator Denis: Then, when a contentious or controversial show is involved—I do not know what you want to call them—is it not normal that the president be aware of what is happening, I am not speaking of music, neither music or folklore?

Mr. Picard: That happens.

Senator Denis: Did it happen in that case?

Mr. Picard: No.

Senator Langlois: Mr. Picard, as I understand your evidence, it appears that, even though there was no consultation at your level or at Mr. David's level, before broadcasting that sketch, you have still expressed an opinion afterwards, and you accept it as being within your programming, your programming policy?

Mr. Picard: The question is very complicated, and I would like to come back to it right after.

I think the question arises at more than one level. The first level is: should Radio Canada satirize? Is it inherently bad? I would like to elaborate on that for a while. Is it inherently bad that Radio Canada should satirize some important Canadian institutions? This is the first point.

The second point is: does this particular program go too far? Is it funny, and so forth? Well, it is like having personal ideas. I think the first question which comes up is this one: should the CBC satirize on some of our institutions or should it not?

Senator Langlois: You should at least pick your victims.

Senator Denis: But this can lead to something different from satire.

Mr. Picard: It is light satire.

Senator Denis: Which shocks many people.

Mr. Picard: It is possible.

Senator Desruisseaux: Mr. Picard, in fact, many people have protested. Have you received any letters of protest?

Mr. Picard: I have not personally received any.

Mr. David: I do not have the figures here, because there are many programs and it is very difficult to speak of mail, but some people find it funny, and some find it disrespectful.

Senator Desruisseaux: I am speaking of this particular program, the others do not concern us.

Mr. David: At that time, it is not a person who is ridiculed, it is the institutions which are satirized. It happens in every country, including England, and the Queen is not spared either, in England.

Senator Langlois: Now they go much farther, they have bombs.

Mr. David: I understand, but at one time in France they satirized de Gaulle very much, and you know it. It is the institutions, more than the president, which are involved.

Senator Langlois: It is what they say at the ORTF as well.

Mr. Picard: It is a comparison . . .

Mr. David: It is a practice we have on radio and television, to have satire, as in the newspapers you have cartoons; radio and television have their particular methods, they make satirical shows.

If you remember, for instance, "*Chez Miville*" and "*Les Couche Tard*", it was the same type of program; they were satirizing politicians, trade unionism or the authorities whether at the financial, social or cultural level, and institutions involving responsibility. It is a way of voicing tensions, and it is extremely important in a society to find a disposition, a kind of irony which asserts the health of the society. It is this way that men have always considered cartoons, and that we are considering it at the CBC. It is quite possible, sometimes, that they are made in bad taste or that mistakes are made. But there, I think it was a satire and there was no malice intended.

Senator Langlois: Coarse.

Mr. David: It may be questionable, I admit. The proof is protests were expressed, but we also received letters from people who found it funny.

Senator Desruisseaux: About those protests, I would like to know exactly what you received. Could you give us a picture of what happened?

Mr. David: Unfortunately, I do not have with me the report on relations with viewers, because I did not think I would have had to deal with this question.

Senator Desruisseaux: Could you provide them?

Mr. David: Certainly, we are going to provide them.

[*Text*]

Senator Langlois: Finally, I merely wish to make this observation. Mr. Picard has referred to a book of rules. I do not know if that is the proper name, but I would like to know if it could be put at the disposal of our committee, through our clerk, in case we want to consult it before we deal with this subject. Is that possible?

Mr. Picard: Yes.

Senator Flynn: Mr. Chairman, following the comment made by Mr. David, I would like to ask Mr. Picard whether he thinks the same ethics should apply to a crown corporation as would apply to a privately owned TV station with respect to the satirizing of all our institutions.

Mr. Picard: Well, I am glad you have raised the question of satire, because generally the role of the CBC is rather different from the role of the private stations.

The Chairman: It is admitted that you are different from anybody else.

Mr. Picard: What is satire? We are now looking, not necessarily at a question of ethics, although strong ethics are essential, but really at a question of principle. Should we satirize institutions? If we consider a program, we have to examine that program, and while some people might think it is inclined to go overboard, other people might think it is funny—I do not know; but in terms of principle, I think that satire—and I would like to talk about that later on—is a very basic problem. It is not a problem of ethics; it is a concept of freedom. I think satire is just as acceptable a medium for the CBC as it is for the private sector.

Senator Desruisseaux: If I may say so, Mr. Picard, when we use words that may be used rather like guidelines, I think we should define these words. "Satire" must be defined quite specifically, and if you say "ridicule" you must define that, too.

Mr. Picard: Very well. Again, I will be forced to give you a very broad answer, but I would say that the ethics of the corporation, and the ethics of the private sector should be the same, because they are both using public wavelengths. Also, I would say that we should not use satire, or things like that, to destroy. That, I think, is the basic principle.

Senator Desruisseaux: Yes. So, what is satire?

Mr. Picard: Satire is a way of, you know, spoofing . . .

Senator Desruisseaux: Exactly. Right. You do not know. We can expand on it, or play with it.

Mr. Picard: When Oscar Wilde says, "This thing is much too important to take it seriously," he is using satire. It is a way of changing the logic of a thing so as to be able to look at the different perspectives of it, and give it perhaps a perspective which people find funny. People have tried for the last two thousand years, starting with Aristotle, to define what is funny and what is laughter, and we are not much further ahead today. We know one thing about laughing and satire, and that is that it tends to allay tension. Satire, as such, has never killed people. It tends to allay tension.

Senator Langlois: But it could destroy something.

Mr. Picard: It could, I agree, and I think our ethical principle should be, "Do not destroy!"

Senator Molson: May I ask Mr. Picard if he feels that the CBC should produce programs that have a political direction?

Mr. Picard: You are talking about news and public affairs, or satire?

Senator Molson: I am talking about programs. Let us take satire.

Mr. Picard: Generally, not. That is what we are trying to do. But satire, obviously, like the news, covers a wide field. If we talk about what I would call, and what other people might call, political bias, I do not think we should have political bias, as such; but I think satire, like the news, covers a wide field. Sometimes it will be used to laugh at or needle some institution, and at another time it will touch upon something which has nothing to do with political life, but which has to do with social life, or with character.

Senator Molson: Is there an effort made to balance these directions?

Mr. Picard: I think there is.

[*Translation*]

Senator Denis: Mr. Picard, I have here the Broadcasting Act. Section 3, subsection (b), reads:

> the Canadian broadcasting system should be effectively owned and controlled by Canadians so as to safeguard, enrich and strengthen the cultural, political, social and economic fabric of Canada;

Mr. Picard, I would like to know if section 3 of the Broadcasting Act would not be violated in a show where the Queen, the governor general, the English people are the French Canadians, are ridiculed?

[*Text*]

Mr. Picard: I do not think I can give a short answer to that. I have to give a long answer. I do not want to misinterpret your point. I would like to make that clear. I do not feel very aggressive here. I rather feel like the first Christians looking at the lions just before they got into the forum.

The Chairman: You are not through yet.

Mr. Picard: I know, Mr. Chairman.

Senator Fournier (de Lanaudière): It was not only Christians that went before the lions.

Mr. Picard: I think that what you are asking there, really, Senator, is, is it a question of principle? And I think it is a very basic one. If the CBC, or any broadcasting institution in any country, or any newspaper, or whatever it may be, spoofs an institution like the Queen, or the generals, or the Prime Minister, or the Senate, for that matter . . .

Senator Denis: Do you care?

Mr. Picard: I say that because we care about it.

Senator Denis: I am not too sure of that.

Mr. Picard: The question is, are you destroying the unity of the country? My answer to that is, if you look at parliamentary democracy—and I think I am not wrong in saying this, because it is my belief—one of the things about Canada is the British system of parliamentary democracy, democracy with freedom and all that. I do not think you tell everybody to kill satire, even the top people, and I would like to give you some examples of that. If you ask people to do that, I do not think it is working for the unity of the country.

I should like to go on for a little bit on this. I am sorry to take some time on it, but I think we are here on a critical issue. In what countries is satire not a public institution? We can name them. They are not England, not Canada and not the United States. It is part of history that one of the first things that any totalitarian government does when it takes control of the country is to cut satire, to stop satire. I do not think that because we satirize the institutions of the country we are weakening the unity of the country.

Let me tell you a story. I was coming back from Yugoslavia, where I was chairman of a European committee, and on our way back to the airport I was with one of the heads of the Yugoslav radio. Somebody asked him, "Do you make any political jokes? Do you laugh at your political figures and institutions?" He said, "Yes, we do that all the time. In

Yugoslavia every week there is a new joke. Think of that. We have not made a joke for three months, and every time we do not make a joke for three or four months in Yugoslavia something very bad happens." Laughing is part of the system in which we live, and I do not think you destroy the unity of the country because you are needling, spoofing or laughing at its institutions.

We are not prepared for it, but with your permission I would like you to look at the spoofing by the BBC, which you will see goes much further than anything we do. Here we are talking about the basic concept of freedom. When Kennedy was in power in the States everybody made jokes about the pablum in the White House, about Bobby Kennedy playing with his ducks in his bathtub and being upset when somebody hid his ducks. Everybody laughed; it was a happy country. We have not heard many jokes in the last five months.

In 1940, when Roosevelt was accused of becoming a dictator of the country because he was asking to become the first president to serve for a third term, he did something very bright, very political, very intelligent, and at the same time he won the game. The newspapers were attacking him on the grounds that he was supposed to be starting to take control of the country, to be a dictator and all that. He asked Will Rogers to present him as a candidate. For half an hour Will Rogers spoofed at Roosevelt, and Roosevelt laughed at himself, everybody laughed at Roosevelt, but he was nominated and he became president again. I think spoofing and laughing is a sign of a healthy society.

Senator Desruisseaux: Do I gather from what you say that you are approving of the program "Les Beaux Dimanches" that we are going to see?

Mr. Picard: I would like to repeat the distinction I drew at the start. The principle is one thing, and that is what we have been talking about. The program itself is a question of judgment: You might not like it; I might like it.

Senator Langlois: Let's see it!

The Chairman: I will not make the fourth mistake and ask for further questions. Now let us get on with the show.

The videotape of "Les Beaux Dimanches" was screened.

Senator Molson: May I ask Mr. Picard if there are any refunds paid to advertisers who are dissatisfied?

Mr. Picard: It would depend on the decision of the Senate. If the Senate thinks it is good, you might receive another bill.

Senator Robichaud: Mr. Chairman, I think there should be a distinction made between satire and indecency, indecency in the sense of an actual attack on our political institutions.

Like the rest of you, I viewed the television show just now and I can only say that from the first word uttered on the show to the last I think I laughed. I saw satire in it, but I did not see one ounce of indecency. In my opinion, it is a good show, it is a funny show, and I do not see why the Senate should have been asked to waste its time as if this were a "chambre à débarras." The Senate is an active institution, and in my estimation we have wasted not only several minutes but perhaps an hour of our time. At the moment I am not in a position to criticize this program one bit. I loved it and I enjoyed it.

Senator Desruisseaux: Mr. Chairman, how many people watched this show on the CBC and its affiliates?

[*Translation*]

Mr. David: I would say approximately one million to one and a half million spectators.

Senator Robichaud: Mr. Chairman, may I ask some senators whether they have found anything in the program that was contrary to their principles?

Well, senator Flynn, do you agree with my opinions, my views?

Senator Flynn: I think that the program is not, let us say, so shocking. I have just seen it here, I had not the first time.

Senator Robichaud: Neither had I.

Senator Flynn: This does not alter the question. We can certainly experience waves of bad taste. I particularly refer to the introduction sequence, the Queen hanging in the air, with her legs in the air. In my opinion that certainly was tasteless. In this sense, it certainly is a satire. But, on the whole, I think that they should not have gone that far. There are some little things, particularly like this introduction sequence.

What interested me most in this program was the opportunity of the visit that Mr. Picard and the officials of the CBC are paying us to determine how the Corporation exercises its control over the initiative taken at some other level to air such and such program, whether it be a satirical program or viewpoints on public affairs for example, in order to maintain the balance which is so often referred to.

We are sometimes are under the impression that some opinions, some viewpoints receive more attention than others that would however better reflect public opinion as a whole, some marginal opinions, I would say, which take up too much of the CBC's time. I was wondering how the Corporation operated to control and balance its viewpoint programs and even its satirical programs.

Mr. Picard: Well, there are several procedures in this regard. First, there are the main policies which are important and serve as "guidelines".

Secondly, to administer the CBC is really to administer it on a day to day basis. It certainly means screening all programs. It has always been said that no balance could be established for all the programs by watching only one of them, that you had to watch a whole series. But we try as much as possible to balance this. We make statistical studies on that matter and I could perhaps tell you—which may be something that Canada can be proud of—that at the CBC the computerized data analysis system is perhaps the most advanced in the world.

There are also the policies. There are the viewers' critics. There are also the basic policies of the "right of reply", or the "fair balance". Also, when someone feels alluded to or that something is done in a direction which seems detrimental or too partial, and so on, he has the right to come back to the CBC, which is done not very regularly but as often as we are asked to, and when it is thought that it is true or necessary.

Mind you, you have a system that is extraordinarily complex, indeed, much more complex that the american or the british systems. But within the management's policies, and so on, we try as much as possible to strike a balance.

Now, it will happen that some people will find that we go too far in a certain direction. It will happen that some people will find that we are not aiming enough in an other direction or that we are exaggerating in that other direction. There is nothing more enlightening than to read the comments received by the CBC. In commenting a single program, people sometimes tell us that we were too biased to the right or too biased to the left. We then try to exercise our own judgment to balance everything. This is not an easy problem, Senator Flynn, for there are several opinions. There are significant minority groups and so on, but we try to strike a balance. In my opinion, which is the opinion often uttered in the Parliamentary Committee, for four or five years, we have made great efforts not to—I should say— "control" the CBC, that is not so, but to create a balance in the programs of the CBC. We have made great efforts in this direction.

Senator Flynn: You know that you have a system enabling you, at some time, or another to intervene and restore a certain amount of balance.

Mr. Picard: Yes.

Senator Flynn: But, let us, for example, consider this one program. If I had to screen it, I am quite sure that I would not have presented the opening scene in the same manner. I find that it was lacking good taste. I would have moreover corrected two or three little things.

I agree that politicians can be subjected to satire. I would add that everything that was done as regards the prime minister, the leader of the opposition and the leaders of the other parties is quite fair, that it is normal. I even quite agree that it is important that we should have this type of satire. But, as I say, I think that the question of the Queen and of the fun which is made of her, is absolutely tasteless because, after all, she has an official role, she is an institution and moreover she cannot defend herself, particularly as a woman, and I think that in any case it shows a lack of good taste.

Mr. Picard: Mind you, what we can say in the first place about this first part is that it is not very funny. It certainly happens that on questions of judgment such as this one, people might go too far. But those who know the CBC better, would be struck by the fact that the joke is basically directed more at the CBC than at the Queen.

Senator Flynn: I understand.

Mr. Picard: The joke is directed more at the CBC than at the Queen.

Senator Flynn: But it becomes subtle. I would generally say that the public would rather be thinking that the CBC belongs to the Queen of England.

Mr. Picard: May I make a distinction, Senator, since I have heard several comments that we are not speaking of the Queen of England but of the Queen of Canada.

Senator Flynn: Yes, but in the context, no distinction is made. These are problems of opinion. I understand that there are narrators or commentators who, thanks to the CBC, really direct public opinion in very specific directions. We always come back with programs which very often try, if you like, to undermine our private business system and sort of thing.

Mr. Picard: Well, that is where the question of balance comes in. Sometimes we go too far. There is also the question of developing professionalism within the CBC, such as in the news and this is a very difficult issue but this is our objective.

You have noted that there has been a strike at the CBC because, in the case of the United Aircraft, people were forced to go and interview the management of the Corporation and if you recall last May, the CBC was shut down for seven days because of a conflict on that subject. It was argued that, first of all, the program was not well balanced.

Senator Flynn: Yes, I do not underestimate the difficulties of your duties. This is not new, I am only wondering whether, with the experience you have acquired over the years, you have found a procedure?

Mr. Picard: The only really valid procedure, Senator Flynn, is to develop, and I think that we have gone a long way in this regard—look at "Format 60"—to develop, as I say, the professional quality of reporting and analysing. This is our objective. I think that we have progressed quite a bit but there is still much to do. Our people are the first to say so. However, I believe that we have made headway. But at the CBC, we often have programs on highly controversial questions. I even think about external things receiving, at one time, general approval despite the difficulty of the problem and the emotional pressure that it creates. The quality was extraordinary and nobody criticized it. The problem of our society, of the Canadian society, of society as a whole, and now of the CBC in particular, is a problem that will always exist. I mean the problem of developing the quality of analysing and reporting, and so on. We surely have a long way to go in that direction.

Senator Flynn: But you surely have less control over your producing staff than the private sector has?

Mr. Picard: To a certain extent, yes. But the private sector certainly does not exercise its control in the same way we do. Of course, we are regulated by federal laws, union laws and so on. We are governed by a structured process of thought reflecting—and I was saying earlier that for me, it is very important—the concept of Canadian liberty. Apart from that, we are a huge organization larger than any private organization in Canada. CTV is a co-operative institution comprising an assortiment of broadcasting outlets. CBC is an organization. I do not object to the question of salaries but the salary paid to a private station in Newfoundland are the salaries in force in Newfoundland. The same gocs for the federal government as well as the CBC; the salaries paid to CBC's staff in Newfoundland are the national salaries. We cannot escape that and it is part of our problem. But very often we do not have the flexibility of the private business. However, the objective remains the same and it is to constantly improve, the quality of professionalism, of reporting, and so on. I think that this quality has already reached a high level but we still have a long way to go in that direction.

Senator Desruisseaux: For those who have the privilege of knowing, for example, the Légers, I am quite struck by the ridicule they have tried to inflect on Mrs. Léger. I understand you when you speak of satire but I distinguish between what I call the proper and quite acceptable satire and the ridicule which cannot only debrimental to those people in their duties, in their acceptance by the public, but can moreover personally hurt them through things that, to us, they never represented. This is what Mrs. Léger is to me and looking at how they pictured her, I must say

that I do not agree with senator Robichaud, who seems to accept the whole program. For the main part of the program, which I saw this morning for the first time, I agree with you that there were perhaps scenes that were objectionable.

Mr. Picard: There are some that are objectionable.

Senator Desruisseaux: And in the light of the experience you have, if you had been given the opportunity to do it, they would not have been included in the program or at least would have been discussed. Now, I have worked for 12 years with private television and radio; it was a very interesting and comforting experience for me and, in many ways . . .

Senator Robichaud: Quite profitable.

Senator Desruisseaux: Quite to—except for the CBC from which only paid 50% of the fees,—but I have always objected to that. However, I left that field six years ago and I must tell you that I agree with you concerning the difficulty there is to run some programs as you would like them personally to be run.

As to your reference concerning union procedures and the areas of active freedom within unions,—I personally quite understand them and we must as far as possible, avoid impeding artistic creativity. But generally, I think that we can even be of some help to artists by supervising their work. Maybe we were a little too quick to accept this program particularly the sequence of a few seconds at the beginning dealing with Mrs. Léger and the references to the prime minister. Some sequences might be acceptable but, to me, they are in bad taste.

I wanted to make my comments on this situation even though I am not a member of this Committee.

Senator Langlois: It seems that we are about to upset the normal procedure of a Committee of this type. We are at the stage of the questioning of witnesses and opinions, judgments of values, if I may say so, have already been expressed that should have only been expressed when the Committee will be considering the report, if any, that will be tabled.

Having made these remarks, I do not want to intervene with Senator Robichaud, but after hearing what he and Senator Desruisseaux had to say, I think that the opinions differ according to the person. We must not forget that this program was not made for a senatorial committee but rather for the Canadian people in general,—people who cannot, as we can, ascertain the veracity of the facts presented to them on television. Also, it was made for people who, being like us in the political game, know how to discriminate between what is really a political game and what is not. But when they are attacking institutions like monarchy, which is the authority in general, I am not talking of the Queen of Canada and of England, which is the supreme authority in this country, and that the people being attacked through the institutions cannot, as a politician can, go to the streets to defend themselves and to answer to the ridicule they are being covered with, that is very bad. That is how the established authority in a country is destroyed. Moreover, when I presented this motion to the House, my only goal was, and still is, that the Parliament keep a certain control over this crown corporation, as the CBC is an agent of Her Majesty. Thus, we must keep a certain control so that, if this type of program is to be allowed, we can at least keep it within bounds.

Senator Asselin: We would have to amend the Act to do that.

Senator Langlois: Not necessarily. The Act clearly says that the CBC is a crown corporation and an agent of Her Majesty. It is in section 40 of the Broadcasting Act; I have it before me. I would like to read it to you, if you want. The Corporation is an agent of Her Majesty and I think that we will keep it within bounds. Senator Flynn, a few minutes ago, indicated a certain restriction which could be applied, but I think that it is too soon now in our debates to make valid judgments. We still have witnesses to question. We also have the president of the CRTC who supervises all these channels, whether private or public, of radio and television broadcasting in Canada, and who will be able to say if, really, programs of this type are within his jurisdiction, or whether he must invervene. As long as we have not all the evidence, until we have not been able to go to the heart of the matter about this program, and the programmation of the CBC, I think that we must defer our opinion until we consider the committee report. Having said that, I would suggest that we continue with the questions put to the witnesses present this morning, and I do not feel I have lost my time. If this hearing this morning aims at putting the authorities of the CBC in a tight situation, maybe in the future there will be somebody, when something is broadcast on television or radio, who will have the authority to speak and to make them fall in. I think that Parliament should not renounce its right, the right it has in this sense.

Senator Asselin: I would have another question. How many critics have you received from social groups, or minority groups, or the public in general, following this program? Can you produce this information?

Mr. David: Yes, we keep a record of all the telephone calls we receive through a service called "Relations avec l'auditoire", and of their content which is expressed, evidently, in a rather fast almost cryptographic style, as we said before, and we can put these reports at the disposal of the committee, should it request it.

Senator Asselin: I would propose that this report or these statistics be put before the committee, please, with the committee's assent.

Senator Langlois: You are not talking of publishing it, only of tabling it?

Senator Asselin: Only to table it.

Senator Robichaud: Mr. Chairman, I would like to make my position very clear. The last statement of Senator Langlois is perfectly true. I have the impression,—I would not want to exempt the CBC of all the program it has produced—but I still think that the CBC should be controlled by Parliament and, if I have said that we were losing our time this morning, maybe on the whole we are not entirely losing it. I think that it is time well spent, even if we are attacking the program we have just seen, since I think that this program contained very little offensive material. There are some CBC programs which I do not approve at all. I think that they are disgusting. This one in particular, except for the part where the Queen starts to dance, I thought it was a little awkward. Moreover, I think that it adds nothing to the program.

Senator Langlois: Did you see "La Sagouine"?

Senator Robichaud: I saw "La Sagouine", and the author, she is Senator Michaud's sister-in-law.

Senator Denis: Are we to think that the Acadians from New-Brunswick, in particular, cannot do anything else but wash floors?

Senator Robichaud: Not at all. "La Sagouine", it's a matter of taste. At home, they are not all sagouines.

Senator Denis: Well, if we have understood the performance correctly, would it not make one think that all French Canadians are floor sweepers, and of porters?

Senator Robichaud: Not at all. You are jumping to conclusions.

Senator Denis: You have heard the names given: butcher, cook, minor jobs.

Senator Robichaud: And what about Mr. Leger?

Senator Denis: Mr. Leger, they ridiculed him in a different way, by saying: Well, he is a French Canadian who has made it, but who is not doing his job.

Senator Robichaud: In all events, it is a matter of opinion.

Senator Denis: We must not forget that it was a French Canadian public which was listening to that. So that at a certain time, they must say to themselves: We are being cheated, we are revolted. They can be revolted to see how French Canadians are treated in the country. So, if CBC's purpose is to bring about Canadian unity, when a crown corporation ridicules a race rather than another, this is not going to unite Canada.

Senator Langlois: Senator Denis' observations must be considered within the present political context of Quebec.

Senator Denis: That is it.

[*Text*]

Mr. Picard: I fail to see any indication that Mrs. Leger is not doing her job right. I do not know how you can say that.

[*Translation*]

Senator Langlois: Do you think that the Montreal dockers have the same idea as you have?

Mr. Picard: I worked a year and a half with the dockers.

Senator Langlois: Listen, I used the expression "docker".

Mr. Picard: Basically, it is not meant to be mean. It is just like when on Christmas day or on New Year's day, the children mock their parents and laugh at them. Anyway, in my own home, they do it a lot. It is not mean.

[*Text*]

Senator Riley: Mr. Chairman, I should like to address my remarks to Mr. Picard. Gilbert Keith Chesterton, the famous litterateur of England, was once described as a propagandist. At that time the word "propagandist" had a somewhat dirty connotation. Chesterton replied in an essay that everything he wrote had a purpose, otherwise he would be a fool. With that in mind, I must say that everything enacted on CBC television, or on any show in show business, has a purpose. Sometimes the purpose is to entertain. My interpretation of this particular show is that it was an affront to the Queen. It was more than satire. It was more than ridicule. Much as I hate to disagree with my colleague Senator Robichaud, with whom I have been associated for a long time in and out of politics, I would interpret this particular show, personally, as an attempt, not to destroy the monarchy as we know it in Canada and in the way we accept the Queen as our sovereign, but to implant doubts in the minds of the Canadian public, probably the impressionable section of the Canadian public, that the monarchy is something we can do without. The first part of the program was an affront to our sovereign state, to the head of our sovereign state, and the same thing applies to the ridicule that was heaped not only on Madam Leger herself but on her family and her brother-in-law the Cardinal.

That being my interpretation of the program, I should like to know what are the guidelines. Senator Langlois has asked for them, and he says that the guidelines will be available to us, but what are the guidelines in respect to good taste? What are the guidelines in respect to the type of program which must be reviewed before it is shown to the people? What are the guidelines in respect to the dangers of propaganda designed not to overthrow but to encourage the overthrow of our sovereignty in the sense that we know it?

Mr. Picard: Senator Riley, the guidelines will be available to you, but I would draw your attention to the multiple and different opinions which have been expressed here this morning. If you have four people in the CBC looking at a program, you might find exactly the same difference of opinion there. At some point somebody says, "We go with it," or somebody says, "No, we don't go with it." If we had a meeting here of CBC managers and we had to judge that program, what would be the answer? I have heard people say this morning that there was nothing offensive about it, and I have heard others say that there was something offensive about it. I can see that some people might regard it as being in bad taste, and I know that some other people reacted very strongly. But that is the problem we face. There is no short-cut way of solving this problem because it involves a question of judgment. There is no way of saying what is right and what is wrong. You have here among senators very different opinions from very different people. That is the same problem we have when we discuss these things. Sometimes they are very clearly in bad taste, and then some other times they are marginal. Then you say, "Well, most of the program is good, but there are a couple of things that do not fit in too well, but on the whole the program is good and we should go ahead with it." We have the same types of questions in mind that you have; we are no different from you, with all due respect.

I should like to make the point again—and I am sorry to disagree with you, Senator Riley, and I do so with respect for your view on the question, but I cannot agree with the statement that this thing was directed either implicity or consciously or in any way was organized to destroy the feeling for the Monarchy in Canada.

Senator Denis: It was. Do you think the separatists did not like that program?

Mr. Picard: Do you want to enter into a bet; just a sheer bet? I say that, because I do not really know; I am not a separatist. But just as a bet, I would say they thought it was dull.

Senator Denis: After all, it is against Confederation and the Constitution.

Mr. Picard: It is not. When Bob Hope makes an hour show . . .

Senator Denis: Let Bob Hope alone. Talk about Quebec. Talk about the French-Canadians. Talk about the program we have seen.

Mr. Picard: It is a complex question, I agree with you there. But let me say this, and perhaps I am wrong, but, as a Canadian, I say that I would be frightened by any principle which would be introduced in Radio Canada, CBC, or the government, for that matter, which would indicate that the English-Canadian has the right to do things that the French network does not have the right to do. I would be thoroughly frightened, and I would say that if you want to find a fast way to encourage separatism, that is the kind of thing that might work. But the fact is that the British laugh at their Queen and, as I have told you, we have a BBC film that goes much further than that. And I can say that people who are shocked by our film would be ten times more shocked by the BBC film. Again it is a question of judgment, but to start with the principle—and maybe I am wrong, and please tell me if I am wrong—that the French network of the CBC or the French-Canadian does not have the same right in terms of using satir and all that as the English-Canadians, would appear to me to be very dangerous. I have never thought about it very much up to now, but it would seem to me, as I have said, to be very dangerous. There are tensions in Quebec.

Senator Denis: But there is the simple fact that the CBC belongs to the federal government and is paid for by the Canadian taxpayer and you produce programs that tend to separate the English and the French, and the province of Quebec from the rest. You can see the cheap jobs that the French-Canadians have in that program. It is revolting. It is disgusting. It means that we are badly treated and it implies that it is no use to belong to the federal government. What is in the Queen? What is in the Governor General? What is in the senators? What is in the job the Quebecer has in the federal entity? Do you not think this is the meaning of this? As Senator Riley says, there is a purpose in every program that is produced and presented.

Mr. Picard: Yes, and that purpose is to entertain. *La Sagouine* was presented to entertain and not in any way to criticize New Brunswick. It is just a facet of life and the idea is to make it a bit funny if we can. And, Senator Denis, when you stop making jokes in Quebec about the federal government and about the Queen and all that, that will be the time to be worried.

Senator Denis: It is not a question of a joke. It is a question of destroying yourself because you belong to the federal organization, and you present a program that tends to separate the federal organization from the province of Quebec.

Senator Langlois: Mr. Picard, you seem to have a different sense of humour from ours, and I will grant you that, but regarding the remark that you made particularly about the BBC, do you mean to say that you compare the situation in England at that time to the political situation we presently have in Quebec?

Mr. Picard: Well, I am not a political reporter, but I would tend to think, from what I have read and heard, that the situation in England is much worse than it is here.

Senator Langlois: Presently? You say that you think the political situation in England is worse than it is here? You are not serious when you say that. You know the trouble we are having in Quebec and you are not forgetting the events of October, 1970. I have not forgotten, if you have.

Mr. Picard: You are now talking to me as an individual, and I accept that. I am not an expert in the field, and I hope these statements are not taken as being statements of policy on the part of the corporation. But, surely, there are more problems now in England than there are in French-Canada.

Senator Langlois: I agree that there are economic problems, but they are not political problems.

Senator Riley: They are not advocating the overthrow of the Constitutional government in England or the sovereign, as such. The Scottish separatists just want to get off on their own, to be something like a province. They want to be decentralized and have their own government but still under the Queen. I think it is the same for the Welsh people.

Mr. Picard: I feel very embarrassed talking about that because you are talking to me now much more as an individual person. I do not believe there is anything there, and I think Senator Robichaud said the same thing, that shows any purpose or resolve to destroy the institution of the Monarchy.

Senator Riley: Well, Senator Robichaud and I have similar responsibilities to the Province of New Brunswick. We have been looking forward for years now to an increase in French programming not only in New Brunswick but in the Maritimes generally, because we want to have our children educated in the French language, perhaps not completely, but we certainly want to give them the opportunity to become bilingual. In New Brunswick we recognize bilingualism, as they do in other provinces. But if we are going to have an increase in French program input into our stations, whether on existing stations or on new French stations, I would be very concerned about any of my children seeing a program like that because it could affect them at an impressionable age. It shows a lack of respect for the Monarchy. So, if we are going to have more French stations and more French programs in the Maritime provinces, then I have serious misgivings after seeing this program. The same applies to other CBC programs—and I shall not go into that in detail now—which Senator Robichaud says are offensive. We are told when we object or when we criticize, "Well, you can monitor your programs, and if you dont't want your children to see them, then turn the machine off!" Well, if you had seven children, as I have, and two or three sets, you would spend all your time going around monitoring every program.

Senator Denis: As I understand it, the purpose of satire is to make people laugh about what is going on.

Mr. Picard: Yes.

Senator Denis: If a program is not against the Monarchy, or against the French-Canadians, or is not against the Governor-General, it is not funny at all?

Senator Riley: We accept satire in the Senate. We get lots of it. We get it from all the media. We get it from the other place. There are consistent attempts to abolish the Senate as an institution.

Senator Langlois: Order, order!

Senator Riley: We accept this. We are constantly subjected to satire. Satire, however, is one thing, but ridicule and effrontery are another.

Mr. Picard: You know, so many people have an opinion on that. Would you like to take 10 minutes to look at a BBC program?

Senator Riley: That is another country. We are not concerned with what happens in other countries. As far as the Monarchy in this country is concerned, we reserve the right not to follow the example of Britain, not to follow the example of the United States. I remember that one time I was talking to Mr. St. Laurent at a railway station here, and I mentioned that perhaps we should follow the British system of diplomacy. He answered me quite abruptly and said, "We will develop our own system of diplomacy." Never mind the BBC. All this applies to the programs, as far as we are concerned, on the CBC, and we should not have to draw our example from the BBC. There are lots of things on the BBC that I do not agree with, and the same thing applies to the American networks. I am talking now as a Canadian with regard to the CBC which is a Canadian institution, a crown corporation, which belongs to all of the taxpayers. It belongs, not to the federal government, as one other senator said, but to all the people of Canada. I think the sensibilities of all the people of Canada should be taken into account when the question of what is good taste is being determined by the officials of the CBC.

Mr. Picard: We are trying to do that. We might not be successful all the time, but we are trying to do that. Take this example here. There are a number of interpretations of the program, and it is the same with every program. It is a matter of judgment. Sometimes we make mistakes; sometimes we may be right. We are very seldom right, from what I understand, but sometimes we may just be right. The fact is, however, when we look at a program, when we try to decide on a program, we face exactly the sort of thing you are facing here today. Opinions are different, people react differently, and you try to make the best judgment you can.

Senator Langlois: Mr. Picard, just to close this reference to the BBC, my opinion is that we have enough of our own faults without importing the faults of others, from whatever the country of origin may be.

Mr. Picard: Touché!

Senator Molson: Mr. Chairman, is this meeting being recorded, in addition to being interpreted?

The Chairman: No—except for the advertisements!

Senator Molson: I noticed those. If I may, Mr. Chairman, I would like to make one more remark, and that is this: I think it is abundantly clear that this program is entirely—well, perhaps not entirely, but very largely a matter of taste, and there is a difference. I think, however, that the vast majority of this committee feel that the program in question was in extremely bad taste. That is my own feeling, based on those little parts of it which have been mentioned three or four times already, and I assure you, I do not want to flog this matter. Apart from that, I think the program might have been extremely good. However, the way it was, it left me with a feeling of bad taste, and I think that is probably the feeling of the committee in general.

Senator Langlois: You should be reimbursed for that.

Senator Molson: That might be very difficult.

Senator Riley: Senator Molson does not review all these shows which carry his banner.

Senator Molson: We do not have that privilege.

Senator Langlois: If you have paid for a program of this kind, your sales will fall very badly.

Senator Flynn: Sometimes bad publicity . . .

Senator Langlois: . . . helps?

Senator Flynn: Yes.

The Chairman: Are there any more questions?

[*Translation*]

Senator Fournier: Please allow me one last remark, Mr Picard; we find, nearly every day, that there are people in the French network of the CBC who think that they own the microphone they use to speak to us and who take advantage of it to broadcast their leftist, separatist ideas, anything, as long as it is against authority, as long as—and sometimes it is even disgusting—as long as it stirs people thanks to their line of thinking. This is what we want to protest against. We do not want to impose anything upon them; they are entitled to their own personal views, but, to take a microphone that belongs to the public and use it as their own personal property to broadcast a message that is anti-Canadian from beginning to end and which is often filled with insinuations, is another matter. At home, we often say, "Well, that is the CBC". Then we switch to channel 10. This goes on nearly every day, and we have had enough of these people who do not identify themselves. They can be what they want to be in their private lives, it does not concern us, it is not a question of imposing our own opinions. However, it is unfortunate that the microphones of the nation are used by people who want to destroy this same nation.

Le président: Y a-t-il d'autres questions?

Senator Asselin: Mr. Chairman, I saw this programme at home. I do have some reservations, but on the whole, I found it funny. I feel that if in a given society it is impossible to have a sense of humour and of satire, I begin doubting about the majority in that society. This was how I reacted to this programme.

I do not mean to say that the CBC akways does everything perfectly. On the contrary, it is often to be criticized. Obviously, some parts may have hurt some people's feelings or some institutions. But the minute you stop having satire or humour, people will cease—maybe not to criticize too openly—questioning our institutions.

I have the impression that we will begin asking some questions about the maturity of our society. Of course, as you have already said, it might be impossible for the administration to screen everything that is broadcast, because planning must be extremely difficult. Of course, when I saw this programme at home, I found that somethings were a little daring. I was not offended to the point of saying that the CBC presented a programme that was in bad taste. I like satire and humour. I have the impression that you have not heard the Governor General's, the Queen's, or Mr. Trudeau's opinions on this programme. Moreover, if we stop criticizing or having satire on public men and institutions, it will be rather dull, if you will allow me the expression. These are my impressions of the programme. I am not saying this to absolve the CBC of all the errors it may commit. As one Senator said a while ago,

sometimes, of course, it is easier for the message of some groups to be broadcast on the CBC network than elsewhere, on other stations, or other institutions of the television industry.

Well, it is the responsibility of the CBC directors to put some order in their business. As far as I am concerned, I think that satire and humour should continue to exist.

Senator Langlois: Mr. Chairman, I think it has been clearly established, and if it has not been, I want to repeat, that no one has said that satire as such should disappear. We only ask that there be some restraint and also some respect for some institutions and for some persons who are unable, as politicians are, to go down in the street and defend themselves if they are attacked.

Another remark that I wish to make following those of Senator Fournier, to the effect that there are some politicians for whom it may be easier than for others to broadcast certain messages, I only want to recall one anecdote, a rather recent one as a matter of fact. This happened when the FLQ solicitor in Quebec left jail one morning. He had been sent there for three or four months for contempt of court. He leaves in the morning, and at night, as if he were a star, he is invited to take part in the programme "Appelez-moi Lise", and then gives his message. He was given the French network of the CBC to broadcast the FLQ message. This is bad. And if it is not bad, I am wondering where we are going.

Senator Fournier: This happens nearly every day.

Senator Langlois: Call it freedom if you want, but I call it licentiousness.

Senator Denis: On the day following the municipal elections, the separatist candidate to the mayorship was interviewed, and not the mayor.

Senator Langlois: The mayor was not important!

Senator Asselin: He did not want to take part in the programme.

Senator Flynn: In that case, Mr. Chairman, where you become aware of an error of judgment or of some excess on the part of some producers, do you impose penalties or do you reprimand them, or something of the kind? Does something happen?

Mr. Picard: Very often. Sometimes, when you think of the errors that are made, and when you find that there are many, you should also think of those that could be made. This happens very often.

Senator Flynn: I ask you the question, impartially, because I would like to have an answer.

Mr. Picard: Yes. This happens very often and when it clearly appears to be repetitious, and that there are successive warnings, very often, we let people go.

Senator Fournier: Have you had results?

Mr. Picard: Of course, there have been all kinds of results. In the past five years, some people have left the CBC, senator Fournier, and there have been many. Some because they wanted to leave, others because they did not meet our standards. Listen, I do not want to justify the CBC or to say that we were right, but to go back to this matter, there was a five-day strike at the CBC, of which you have heard, there was a producers' strike because they were forced to interview the administration of United Aircraft. This is an example where not only some are to be blamed, but, moreover, we told the people involved: you will not do it. So, we certainly do it.

Senator Langlois: The Board of Governors at McGill had similar problems last week, if I understand correctly.

Mr. Picard: Yes.

Senator Langlois: Now, Mr. Picard, do I conclude from your evidence, although you were not agreeable, but may I conclude, and I did not think that you would do it this morning, that there might have been errors as far as this representation is concerned. But in any case, I conclude that you must be happy to have had our opinion on this programme, and I am convinced that you will take it into account in so far as possible.

Mr. Picard: I thank you for what you are saying. I was going to say, it is true, and maybe I will speak in English a little.

[*Text*]

Mr. Picard: Despite the fact that appearing before a Senate committee gives us a rough time, it is my opinion that we do not come here often enough. This is the first occasion on which I have appeared before you. I hope in future there will be more opportunity for us to meet in discussion and for us to receive the benefit of your views. I believe this would make for better understanding between us.

[*Translation*]

Senator Langlois: When I made this remark, Mr. Picard, I had, as your producers say, a purpose in mind. First of all I wanted to answer my friend, senator Robichaud, on the remark that we had wasted our time. Secondly, to tell you that you may be asked occasionally to appear again.

Mr. Picard: I will always be pleased to return. I find that this has not happened often enough in the past.

[*Text*]

Senator Riley: Senator Robichaud looks for the best in everything.

Senator Robichaud: I am an optimist by nature.

The Chairman: There being no further questions, Mr. Picard, have you anything to add to your testimony?

Mr. Picard: Only that I should like to reiterate that even though it is a tough job to face the lions in their den, as I was saying at the beginning, it is a most useful process and we need more of it. We would be most pleased to appear before you again.

Senator Riley: Mr. Chairman, in reference again to Senator Langlois' request for the book of guidelines, I wonder if a copy of that book could be given to each member of the committee.

Mr. Picard: Certainly.

Senator Langlois: Is it voluminous?

Mr. Picard: No. We will send one to each member of the committee.

Senator Riley: Unexpurgated, please.

Senator Desruisseaux: If Mr. Picard does appear before us again, Mr. Chairman, perhaps he could explain some of these guidelines.

Mr. Picard: Certainly. I would be pleased to do that.

Senator Langlois: Mr. Chairman, I understand that the President of the CRTC is going to appear before us at some later date. Would it be possible to retain this morning's videotape in case he has not seen it?

Mr. Picard: We will not leave it here this morning, Senator Langlois, but it would be an easy matter for us to arrange things as they are this morning on 48 hours' notice.

Senator Riley: Is there a tentative date for the appearance of Mr. Juneau, Mr. Chairman?

The Chairman: I do not believe so.

The committee adjourned.

Published under authority of the Senate by the Queen's Printer for Canada

Available from Information Canada, Ottawa, Canada

Government
Publications

LIBRARY
UNIVERSITY OF TORONTO

FIRST SESSION—THIRTIETH PARLIAMENT
1974

THE SENATE OF CANADA

PROCEEDINGS OF THE

STANDING SENATE COMMITTEE ON

TRANSPORT AND COMMUNICATIONS

The Honourable J. CAMPBELL HAIG, *Chairman*

Issue No. 4

WEDNESDAY, DECEMBER 11, 1974

Complete Proceedings on Bill S-18, intituled:

"An Act respecting International Air Transport Association"

REPORT OF THE COMMITTEE

(Witnesses: See Minutes of Proceedings)

28220—1

STANDING SENATE COMMITTEE ON
TRANSPORT AND COMMUNICATIONS

The Honourable J. Campbell Haig, *Chairman*

The Honourable Maurice Bourget, *Deputy Chairman*

The Honourable Senators:

Blois	Lawson
Bourget	McElman
Burchill	Molgat
Davey	O'Leary
Denis	*Perrault
Eudes	Petten
*Flynn	Prowse
Forsey	Riley
Graham	Smith
Haig	Sparrow
Langlois	Welch—(20)

(Quorum, 5)

**Ex officio members*

Order of Reference

Extract from the Minutes of the Proceedings of the Senate, November 26, 1974:

"Pursuant to the Order of the Day, the Honourable Senator Macnaughton, P.C., moved, seconded by the Honourable Senator Fournier (*de Lanaudière*), that the Bill S-18, intituled: "An Act respecting International Air Transport Association", be read the second time.

After debate, and—
The question being put on the motion, it was—
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Macnaughton, P.C., moved, seconded by the Honourable Senator Fournier (*de Lanaudière*), that the Bill be referred to the Standing Senate Committee on Transport and Communications.

The question being put on the motion, it was—
Resolved in the affirmative."

Robert Fortier,
Clerk of the Senate

Minutes of Proceedings

Wednesday, December 11, 1974.

Pursuant to adjournment and notice, the Standing Senate Committee on Transport and Communications met this day, at 9.30 a.m. to consider Bill S-18, *intituled:* "An Act respecting International Air Transport Association".

Present: The Honourable Senators Haig (*Chairman*), Bourget, Flynn, Forsey, Graham, Petten and Riley. (7)

Present but not of the Committee: The Honourable Senator Macnaughton.

In attendance: Mr. E. R. Hopkins, Law Clerk and Parliamentary Counsel.

Witnesses:

International Air Transport Association:

Mr. Knut Hammarskjold,
Director General;

Mr. J. G. Thomka-Gazdik,
General Counsel;

Mr. D. Gordon Blair,
Counsel.

After discussion during which two letters were read by Mr. Blair and subsequently Tabled, and upon motion of the Honourable Senator Graham, it was *Resolved* to report the said Bill without amendment.

At 10.05 a.m. the Committee adjourned to the call of the Chairman.

Attest:

Mrs. Aline Pritchard,
Clerk of the Committee.

Report of the Committee

Wednesday, December 11, 1974.

The Standing Senate Committee on Transport and Communications to which was referred Bill S-18, intituled: "An Act respecting International Air Transport Association" has, in obedience to the order of reference of Tuesday, November 26, 1974, examined the said Bill and now reports the same without amendment.

Respectfully submitted.

J. Campbell Haig,
Chairman.

The Standing Senate Committee on Transport and Communications

Evidence

Ottawa, Wednesday, December 11, 1974.

The Standing Senate Committee on Transport and Communications, to which was referred Bill S-18, respecting International Air Transport Association, met this day at 9:30 a.m. to give consideration to the bill.

Senator J. Campbell Haig (*Chairman*) in the Chair.

The Chairman: Honourable senators, I have received a letter from our Law Clerk saying that this bill is in proper legal form. Who will speak for the International Air Transport Association?

Mr. D. Gordon Blair, Counsel, International Air Transport Association: Mr. Chairman, I am counsel for the association. On my left is Mr. Knut Hammarskjold, the director general, and, on my right, Mr. Julian Thomka-Gazdik, counsel.

The Chairman: If you wish to make a brief statement, please go ahead. We are in your hands.

Mr. Knut Hammarskjold, Director General, International Air Transport Association: Mr. Chairman, perhaps I may say a few words on the creation of this association. It was created immediately after the war when governments and airlines tried to organize a world-wide air transport system to serve countries and nations for the future.

The governments created ICAO, which is headquartered in Montreal, and the airlines were requested to assist governments to take over one of the main tasks which governments were not able to cover in the Chicago Convention—namely, the economic side.

In addition, the air transport system being world-wide and needing a very high degree of standardization both in the technical and economic fields, governments through ICAO needed some form of expert support, and IATA was created for that purpose.

Obviously, the conditions after the war were very different from what they are today. The system after the war was served mainly by scheduled airlines. Today there are other airlines which operate programs, but chartered services represent around 20 per cent.

The amendment suggested is, in fact, an updating of the charter to make it correspond with today's conditions.

One year ago, the airlines within IATA, recognizing the importance of the charter sector, suggested the creation of a charter conference within their own framework. This has to be submitted to governments for approval. Comments were made that this would exclude charter operators from taking part in discussions of great importance to them. In fact, the present amendment is a follow-up, to enable charter operators to take part, if they so wish.

I should make clear that any agreements negotiated are of an advisory nature. They are all subject to government approval, governments being responsible for public services. I think that is all I can say.

Senator Bourget: How many chartered airlines have made application to join IATA?

Mr. Hammarskjold: None so far. We, for reasons of wanting to be correct, have not gone out to solicit any new members before we are able to accommodate them. We will not do so, because we are not counting heads. It is the value aspect which should make them come in or not come in.

Senator Graham: Mr. Chairman, could we have an explanation of the word "supplemental"?

Mr. Hammarskjold: The word "supplemental" is used, especially in American aviation language, to characterize one type of carrier which is supposed to supplement the services provided by the scheduled airlines. In other aviation countries and language they are called either independents, non-scheduled or charter airlines. Today the word "non-scheduled" is no longer correct, because I would say that about 87 per cent of the supplementals or independents are, in fact, programmed services.

Senator Graham: Do we have an example of that in Canada?

Mr. Hammarskjold: I think you have probably several independent carriers offering charter services. One of them, I take it, is Wardair.

Senator Graham: I understand that, but in terms of offering supplemental services to the regular carriers.

Mr. Hammarskjold: I think that is an expression used only be the CAB. We do not use it. It does not appear anywhere in our official documents.

Senator Flynn: Is this bill incorporating the association the only constitution of the international association? Is it constituted in Canada for the whole world, or part of it, anyway?

Mr. Hammarskjold: This constitution is the basis of our world-wide activities, and therefore other countries depend on your Parliament to be able to update our operations.

Senator Flynn: And the head office is in Montreal?

Mr. Hammarskjold: Yes.

Senator Flynn: And your main purpose is to arrange for the air fares and then seek approval of the governments concerned?

Mr. Hammarskjold: We have two main purposes. One is in the technical field, where for safety and a number of other reasons, the airlines have to advise governments

through ICAO on operational and engineering matters. The other one is in the economic field, fares and rates, where the airlines designated by governments in, I believe it is, about 700 bilateral intergovernmental agreements—have the responsibility to negotiate, and then submit recommendations.

Senator Flynn: Charter airlines have to have their rates approved by governments as well as, let us say, the scheduled airlines?

Mr. Hammarskjold: So far as charter airlines are concerned, there are no general rules. Countries have individual regulations, and this makes for a certain inconsistency world-wide.

Senator Flynn: What would this bill do with regard to these charters?

Mr. Hammarskjold: It would give them the opportunity to negotiate, if not agree, charter fares as a sort of bottom in the total system of air fares. You are probably aware that in the last 10 or 15 years in the charter field there have been around 50, 60 or 70 bankruptcies because there has been no system. The weak have just disappeared, and there have been all sorts of social and other consequences both for the public and employees.

For that reason, the North Atlantic governments, including Canada, plus the Europeans and the United States, have been negotiating in a triangular fashion over the last two or three years to find some sort of common system which would include the possibility of a charter fare base to avoid this constant killing of each other.

In the last two years governments have even requested that airlines, both charter and scheduled, sit together under special dispensation and discuss charter fares. This has been rather improvised. We have de facto provided the secretariat, although we have kept outside completely. What this does is to provide a permanent forum in a certain orderly fashion, if charter airlines and others want it. It is nothing that is imposed.

Senator Bourget: Was it at your request that this bill came before us?

Mr. Hammarskjold: It was at the request of our general assembly of 111 airlines. We have a sort of parliament of airlines, which met in Montreal in September of this year.

Senator Bourget: Have you discussed this bill with the Canadian Transport Commission?

Mr. J. G. Thomka-Gazdik, Q.C., General Counsel, International air Transport Association: I have discussed this bill with Mr. Cope. Mr. Cope authorized me to say that they are aware of it, but they do not feel they ought to comment on it. It is not within their competence to comment at this stage on the bill.

Senator Flynn: If they were opposed to the bill, they would certainly comment.

Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel: May I intervene? We do not normally ask the Canadian Transport Commission to comment, as it has the character of a court of law. We did check with the Ministry of Transport, and any comment would be routed through that ministry rather than through the Commission.

Mr. Thomka-Gazdik: We have a letter from the Ministry of Transport which indicates that it has no objection to the bill.

Mr. Blair: Perhaps that letter could be tabled, Mr. Chairman.

The Chairman: Yes.

Senator Flynn: It would be useful to have that letter tabled. It may save time in the other place.

Mr. Blair: We also have a letter from the Department of Consumer and Corporate Affairs, also indicating no objection to the amendment. Perhaps that letter, too, could be tabled.

The Chairman: Yes.

Senator Bourget: Senator Grosart asked a few questions in connection with this bill during debate on second reading.

Senator Macnaughton: I think Senator Grosart's questions are answered, Mr. Chairman, by those two letters which have now been filed with the committee. Perhaps it would be useful if Mr. Blair read those letters.

The Chairman: Yes.

Mr. Blair: Mr. Chairman, the first letter is addressed to my law firm of Herridge, Tolmie, Gray, Coyne & Blair. It is dated November 8, 1974, and is signed by L. J. Shields, Counsel, Air Administration, Transport Canada. It reads as follows:

> Re: International Air Transport Association
>
> It is regretted that there has been some delay in making a reply to your letter of October 2, 1974, addressed to Mr. J. T. Gray, Counsel and Legal Adviser of the Ministry of Transport, in the matter of the amendment to the articles of incorporation of the above mentioned Association.
>
> I am directed to advise that the Department of Transport has no objection to the said amendment.

The next letter is dated October 8, 1974, and is addressed to Mr. John M. Coyne, Q.C., of the law firm of Herridge, Tolmie, Gray, Coyne & Blair. It is signed by Digby Viets, Senior Legal Adviser, Ministry of Consumer and Corporate Affairs, and reads as follows:

> *RE: INTERNATIONAL AIR TRANSPORT ASSOCIATION*
>
> This will acknowledge and thank you for your letter of October 2, 1974 enclosing a draft private Act amending the Act of Incorporation of the above Association.
>
> If the draft application was being made to this Department to amend the By-laws of a corporation incorporated under Part II of the Canada Corporations Act, the substance of the Bill would be acceptable.
>
> Because this is a Bill to be considered by Parliament amending a private Act of Parliament, it does not seem appropriate that we should indicate whether or not our Department has any objection to the proposed proceeding.
>
> I had discussed the matter and written a letter to Mr. Cliff Kennedy, Assistant Counsel, Legal Services, Department of Transport, in early September.

The Chairman: Are there any further questions or comments?

Senator Flynn: Mr. Chairman, I move that we report the bill without amendment.

The Chairman: Is it agreed that this bill be reported without amendment?

Hon. Senators: Agreed.

The committee adjourned.

Published under authority of the Senate by the Queen's Printer for Canada

Available from Information Canada, Ottawa, Canada

CAI YC M
-T13

Government
Publications

FIRST SESSION—THIRTIETH PARLIAMENT
1974-75

THE SENATE OF CANADA

PROCEEDINGS OF THE

STANDING SENATE COMMITTEE ON

TRANSPORT AND COMMUNICATIONS

The Honourable MAURICE BOURGET, *Deputy Chairman*

LIBRARY
UNIVERSITY OF TORONTO

Issue No. 5

WEDNESDAY, FEBRUARY 19, 1975

Second Proceedings on the examination of the Television Program entitled:

"Les Beaux Dimanches"

(Witnesse: See Minutes of Proceedings)

28341—1

STANDING SENATE COMMITTEE ON
TRANSPORT AND COMMUNICATIONS

The Honourable J. Campbell Haig, *Chairman*

The Honourable Maurice Bourget, *Deputy Chairman*

The Honourable Senators:

Blois	Lawson
Bourget	McElman
Burchill	Molgat
Davey	O'Leary
Denis	*Perrault
Eudes	Petten
*Flynn	Prowse
Forsey	Riley
Graham	Smith
Haig	Sparrow
Langlois	Welch—(20)

(*Quorum* 5)

*itEx officio members

Order of Reference

Extract from the Minutes of the Proceedings of the Senate, October 31, 1974:

"The Honourable Senator Langlois moved, seconded by the Honourable Senator Denis, P.C.:

That the Standing Senate Committee on Transport and Communications be authorized to examine and report upon the matter of the program entitled "Les beaux dimanches", televised on 28th April, 1974, on the French network of the Canadian Broadcasting Corporation.

After debate, and—
The question being put on the motion, it was—
Resolved in the affirmative."

Robert Fortier,
Clerk of the Senate.

Minutes of Proceedings

Wednesday, February 19, 1975.

Pursuant to adjournment and notice, the Standing Senate Committee on Transport and Communications met this day at 9:30 a.m.

Present: The Honourable Senators Bourget (*Deputy Chairman*), Denis, Flynn, Langlois, McElman and Petten. (6)

Present but not of the Committee: The Honourable Senators Lapointe (*Speaker*), Asselin, Desruisseaux, Fournier (*de Lanaudière*) and Thompson. (5)

The Committee proceeded to further examine the Television Program entitled "Les Beaux Dimanches".

Witness:

Mr. Pierre Juneau,
Chairman,
Canadian Radio-Television Commission.

At 12:10 p.m. The Committee proceeded to consider the next order of Business *in camera.*

At 12:40 p.m. the Committee adjourned to the call of the Chairman.

ATTEST:

Mrs. Aline Pritchard,
Clerk of the Committee.

The Standing Senate Committee on Transport and Communications

Evidence

Ottawa, Wednesday, February 19, 1975.

The Standing Senate Committee on Transport and Communications met this day at 9.30 a.m. to examine and report upon the program entitled "Les Beaux Dimanches", televised on April 28, 1974, on the French network of the Canadian Broadcasting Corporation.

Senator Maurice Bourget (*Deputy Chairman*) in the Chair.

The Deputy Chairman: Honourable senators, our agenda today is concerned with the examination of the program "Les Beaux Dimanches". We have as our first witness Mr. Juneau who, as you know, is Chairman of the Canadian Radio-Television Commission. I asked him this morning if he had something to say before we start the questioning, but Mr. Juneau told me he would prefer to have the members ask him questions; so I will ask Senator Langlois, the sponsor of the motion, to start the questions.

[*Translation*]

Senator Langlois: Mr. Juneau, we are very happy to see you this morning and I believe that I am partly responsible for your presence here this morning. If this motion has been a misjudgement on my part, I do not believe that I have to ask to be excused, because we will have had the pleasure of seeing you.

I will begin my questions by refreshing the memory of the Committee as to the Legislation which regulates radio television in Canada. I will, first of all, refer you to the first part of the Radio Broadcasting Act, particularly to subsection 3 which defines the radio broadcasting policy for Canada and which begins by stating the principle that broadcasting undertakings in Canada are of the domain of public property, that the system must be effectively owned and controlled by Canadians, that all persons licensed to carry on broadcasting undertakings have a responsability for programs they broadcast, subject only to generally applicable statutes and regulations. It is then stated that the canadian broadcasting policy must be of high standard,—that is subsection (d) of section 3,—and that it must use predominantly Canadian creative resources.

There are many other points, but I now refer to paragraph 4 of subsection (g) of section 3, in which it is stated that the national broadcasting service should contribute to the development of national unity and provide for continuing expression of Canadian identity. I think that it is enough to establish what the legislator wants our broadcasting policy in Canada to be.

Now, if I refer to the third part of the same law, I get to the establishment of the Canadian Radio-Television Commission, of which you are the president, Mr. Juneau. I see that the powers of your Commission are stated in section 16, Powers of the Commission, and I do not believe it is necessary to remind you the powers that you hold as far as our national broadcasting system is concerned.

You have control and supervisory powers on programs, and I believe your essential power is, unless I am being misled, to make sure that the broadcasting policy for Canada, as shown in section 3 of the Law, is respected in our country.

After having clarified this area of the broadcasting legislation, I would like to ask you, Mr. Juneau, how these powers are exercised?

Mr. Pierre Juneau, President, Canadian Radio-Television Commission: Mr. Senator, do you want a general answer or an answer directly related to the problem we will discuss today?

Senator Langlois: A general view.

Mr. Juneau: Let us say that in a general way the Commission has a power of regulation and a power of supervision. To explain this, we can perhaps use the english terms: "Regulation and Supervision". That is not only "Regulation".

These regulatory powers, that is if we consider as regulation everything that has power of law, if I can say,—the regulations which can be considered as established by the Commission itself, in pursuance of the law. There is also another function that the law assigns to the CRTC; that is the stipulating of the conditions necessary to get a license, and I do not know if we can say this, as you are lawyers and used to this vocabulary, but they also have power of law, and in any case a considerable value of coercion. There are also more general supervisory powers which are rather persuasive powers, if I can say.

Now, in trying to answer in a more accurate way to your question, I would like to deal with the question of programs, since that is the area that interests you, rather than the awarding of licences.

As far as programs are concerned, I believe that you have quoted section 3, and there is one subsection which deserves attention in relation to this morning's discussions: it is the subsection that says that all persons who are licensed to carry on broadcasting undertakings have a responsibility for programs they broadcast but the right to freedom of expression and the right of persons to receive programs, subject only to generally applicable statutes and regulations, is unquestioned.

So there seems to be in this section an emphasis on the part of the ligislator to reject the responsibilities of the individual programs on the license owners themselves, and not on the CRTC, but, however, subject to generally applicable statutes and regulations.

Well, in the law, there is the text, the subsections you have quoted and which relate to the Canadian contents,

the duration of the programs, etc. So I think that we go back to the regulations themselves, which can have been laid down by the CRTC, according to subsection (c) of section 3. There is a regulation, regulation no. 5 of the CRTC, which is already quite old, and that is the only regulation which can be applied in a case like the one we are discussing this morning; this regulation prohibits a station or a license carrier to broadcast;

(a) Anything contrary to the law;

(b) images or remarks which could be offending for any race, religion or belief;

(c) any indecent, blasphemous or obscene language or image;

(d) any false or misleading news announcement;

There are other paragraphs, but they do not relate to the subject we are discussing this morning.

Senator Langlois: I understand, Mr. Juneau, that this regulation No. 5 which you have just read refers mainly to subsection (b) of section 3 in which it is stated:

> That the Canadian Broadcasting System should be effectively owned and controlled by Canadians so as to saveguard, enrich and strenghten the cultural, political, social and economic fabric of Canada.

Mr. Juneau: There is no doubt about it and this is a consequence of subsection (c).

Senator Langlois: As far as the law is concerned.

Mr. Juneau: It is subsection (c) which relates to the regulations themselves.

Senator Langlois: Since you have laid down regulations, can I ask you, now, if there are sanctions for having broken these rules and the general nature of these sanctions?

Mr. Juneau: After a breaking of the rule, there must be an intervention in court. So the court will have to decide, according to the nature of the infraction, the penalty that must be inflicted.

Senator Asselin: There is no disciplinary committee?

Mr. Juneau: That is the only possible recourse and that is the recourse to the court, according to the regulations.

Senator Langlois: Before resorting to this extreme measure, Mr. Juneau, does your Commission have the policy of first of all calling to order?

Mr. Juneau: In the cases where the infraction to the rule is very obvious,—there is for example a rule that states that there must not be no more than twelve minutes of publicity for each hour of television, it is very easy to measure, you only have to watch stations and check if there are twelve minutes, twelve minutes and a half or thirteen minutes. In cases that are as easy to check and measure as this one, when the Commission sees that there has been an infraction, the concerned station is warned and, if there is evidence of neglect or bad will, the Commission intents actions in court. If, for example, a station exceeds on many occasions the twelve minutes limit, well, in such a case, no warning is given, but if it looks like there has been nebligence or inadvertence, and that the circumstances are exceptional, well, in such a case, just like I said, the Commission warns the station before taking any action. However, if the station does not comply with the warning of the Commission, then actions are taken in court.

Senator Langlois: Now, Mr. Juneau, to get back to the program which is the object of this morning's sitting, and of your presence here, I would like to say, before asking any question on the subject, that, if I asked the Senate to study this program, it was rather to indicate that, in this instance, if CBC has not exceeded the limit, it came at least very near. It was mainly to give a warning that, even if we have an absolutely independent State Radio in Canada, we may be the only country in the world to have such a free radio-television system, where the only possible intervention is ours. And I disliked very much the fact, the other day, that witnesses compared us to the ORTF. I think that this is really too much, because if there is a limited and controlled radio-television system, it has to be the ORTF.

But when I saw this program and heard the language that was used, I thought that it was almost bordering the definition of obscenity that is contained in your Rule No. 5; and particularly, when it was suggested to Her Majesty the Queen in a song, "Use your head, use your buttocks". I believe that if this did not exceed the limit of decency, it came very near. It is mostly this obscene language, and I am not easily scandalized;—but on television, I am not the only viewer, there are children and all the people of Canada; so I believe that such language should be prohibited on a national television netwerk. The same thing applies to any netword, if you want. The thing that struck me mainly is that it seemed like they wanted to get across a message. It is not the first time that such a thing is tried at CBC.

You must first of all figure the present situation in Quebec. I still remember October 1970. And I will not forget it in a long time. You must keep in mind that there is a very serious political problem in Quebec.

You must not forget that they had chosen as main artist, who is furthermore a very good artist that I like to hear when she remains in the limit of decency—but who is an acknowledged separatist.

Senator Fournier (De Lanaudiere): An anarchist!

Senator Lnaglois: I would not say that. However she is an acknowledged separatist. You are trying to get a message across when you imply that the monarchy is not worth much and that it costs a lot of money. When the Queen's representative or his wife is cast as saying that they can have a trip across Canada at public expenses, that it is not expensive, that she can indulge herself in having breakfast in Vancouver, dinner in Ottawa, and being sick in Halifax in the evening, without having to pay one penny, I think that this is really too much. There is a feeling of destruction, they want to get across the message that this costs a lot of money, and what about this reunion with the mother-in-law, this old motherland by adoption, the idea is that it is very expensive for the people of Canada and that we could do without it.

Then there is the other message that they seem to want to get across in this program, that is the state of inferiority of the French Canadian in the confederative system. They tried to ignore the fact that the present representative of the Queen is French-speaking, but then they put the emphasis on the fact that it is all there is to it. If you want to find any other French-speaking person in Rideau Hall, you have to go down to the kitchen, and there you have a

Quebecer Sagouine who seems to represent our race. If this is not an anticonfederation message, I have never seen one! I know that according to them it is satire. It was satire, but satire is relative. Just imagine that you are a docker living in Eastern Montreal, or maybe a worker from Pointe-aux-Trembles, who probably form the majority of the audience of Radio-Canada on the Island of Montréal; they are watching television and they already have preconceived opinions; so, with this satire, they could jump quickly to conclusions.

They realized immediately that someone was trying to get a message across. And they understood the message, they are not stupid. I think that we must judge the program in this context, I think, at least as far as this kind of program is concerned, that CBC must be given a quite serious warning not to go any further, because then the rule will be applied. That is why we ask you to be present here this morning, but we will not ask you to give a judgment this morning. We do not have any advice to give to you. I must however say that I am not threatening you, but if I ever see another similar program, I will not hesitate to repeat this action, even if it is only to warn CBC to be carefull, because they are bordering the limit that has been allowed.

This was the preliminary to the question that I want to ask.

The first question concerns the degree to which programs of this kind satisfy the regulations laid down by your Commission, as far as the content, mainly from the high standard point of view, the Canadian content and all these factors are concerned? Did you have in mind programs of this kind, vulgar programs, not really obscene, but vulgar?

Mr. Juneau: The regulation on the Canadian content does not prescribe to the television or radio stations the content or the style of the programs they are to produce and present. It is only stated that 60 per cent of the programs, over the whole day, must be canadian, and 50 per cent during prime time. This regulation on the content of the Canadian programs does not concern at all the content of the programs. But, on the other hand, I think that you also asked me—what was the other part of your question—

Senator Langlois: Is this kind of program the model that you consider for the programs of Canadian content?

Mr. Juneau: Well, as it is said in the CRTC regulation on Canadian content, there is no indication as to what these programs must be like.

It is just said that there must be Canadian programs.

Senator Asselin: The percentage?

Mr. Juneau: That is only a question of percentage.

Senator Langlois: I understand very well, but I will ask you my question in a different way: do you think that a program such as the one we are studying this morning contributes, as it is provided in subsection (b) of section 3 of the Law, to "saveguard, enrich and strengthen the cultural, political, social and economic fabric of Canada."

Mr. Juneau: In my opinion, the intent of the Act was not that the CRTC should express a judgment on each of the radio television programs in Canada. This section is what some call a preamble to the Act, a section, which in my opinion, is very useful to interpret the general spirit of the Act. It seems to me that this section, this subsection describes the aim that Canadian broadcasting, Canadian stations and broadcasting networks should generally pursue. I do not think, in all deference, Senator, that this subsection was intended to impose on each broadcasting program such an objective, because, in this case, any broadcast, or any part thereof which should express a critical opinion regarding a federal Act could be considered illegal, as I understand the interpretation they want to give this section. However, it seems to me it is not the interpretation which should be given.

Senator Langlois: But would it not also be illegal, Mr. Juneau, to spread anti-nationalistic ideas?

Mr. Juneau: I think it would be contrary to the Act that a radio-television station in Canada, particularly the CBC, should fight national unity, confederation, as a general editorial policy. Could you repeat your question, please? I apologize, I have somewhat lost the thread of your question?

Senator Langlois: In my last question, I was asking you if, in your opinion, it would not be illegal to spread through the broadcasting system anti-nationalistic and anti-confederation ideas?

Mr. Juneau: It would certainly be contrary to the Act to fight national unity, as a general editorial policy. It would certainly be contrary to the spirit of the Act.

Senator Langlois: Mr. Juneau, you will notice that I am trying to phrase my questions in a rather general way in order not to ask you to pass judgment this morning on this program we are dealing with. I just want to determine your policy. How do you implement it?

Senator Asselin: You refrain from asking him that, while actually asking it.

Senator Langlois: I am providing exits.

Mr. Juneau: I certainly do not want to avoid answering your questions, and if you find that I am staying too far from the intent of your question, please, just carry on, Senator.

Senator Langlois: Now, a while ago, you spoke of penalties for infringements of your regulations, you said you have the power to take legal action against a network or a specific station, has it already occurred?

Mr. Juneau: Yes, it happens regularly. I can give you examples which are crossing my mind, chiefly in the case of commercials. Yes, it happens frequently enough. It happened, about a year ago, in the case of a political statement when a radio announcer took a stand about an election which was to take place the following day. As you know, this is contrary, both to the CRTC regulations and the act itself which says that 24 hours before an election no partisan broadcasts should be made. We brought an action in this case, it happens often enough.

Senator Langlois: I gather you must have exploited this aspect of the election act and during the first meeting of this committee, I asked the CBC representatives what they thought of what happened during the last provincial elections in Quebec, when the very polling day they broadcast over the radio, constantly for the whole day, separatist songs sung by Pauline Julien, if it was not a message, while she is recognized as a militant, she sand all day, "Bozo les culottes" and all that stuff. I wonder, whether at

that time, you were told about those broadcasts. Whether the CBC, I have a feeling that at that time the CBC was transgressing the election act, but there are all sorts of means of communicating an idea.

Mr. Juneau: Yes, you know that the law enforcement bodies must always express a practical judgement. If you consult your lawyers, and you are one, in such cases if you consult your lawyers and you ask them what should be done, they pass with you a practical judgement as to the action to be taken. If I take a very controversial case, the case of excessive limits of advertising, when a station exceeds by half a minute or three quarters of a minute the required time. You consult your lawyers, you study the circumstances and even if, in general, you must implement the law in the same way for everybody, it remains that in practical cases, the lawyers and the courts know it well, you must decide whether it is suitable in such a case to bring legal action or not. One of the factors to be considered, is the effectiveness of the intervention, and the ridiculous aspect of the situation. I think in the case you are mentioning, there was first an aspect of the question which did not, I am losing no time to tell you, furthermore, in my opinion intervening would not have been very practical. In short, there is the ridiculous aspect of intervening in such a trivial matter. As a matter of fact, facts proved us right. It did not have much bearing on the decision of the population.

Senator Langlois: I understand, but you must not always play with fire, and because it has had no immediate effect, it is still an attempt and even if it has failed, it does exist and it is governed by existing legislation. It is such programs which are likely to be the most effective. I think in such a case and I must say if the CRTC comes to the same conclusion as I have, it must bring legal action. However, I think calling the transgressor to order should perhaps prevent the repetition of the action, the production of such programs and would help to show to the CBC and other independent stations, that there is an authority which is watching their activities. It is simply in that sense that I have drawn your attention to this program.

Now, Mr. Chairman, I do not want to monopolize the questions, and I am ready to let all the Senators ask theirs.

The Acting Chairman: A supplementary?

Senator Asselin: With Senator Langlois's permission. Senator Langlois is speaking of admonitions. Under the regulations of the CRTC, can you simply take legal action if you claim that the CRTC Act has been infringed?

Mr. Juneau: I think that in a case where there is an obvious infringement of a regulation which is not very serious, one can abstain from taking legal action and made an admonition instead. It has happened to us. I think there are cases where it is obvious that there has been carelessness, or perhpas remissness, or more levity than ill will. I am thinking, for example, about a case that occurred some years ago, when a radio station—I will not even identify the place—announced during several days, in its news bulletins, that somebody was going to die, that the person was ill. Perhaps Senator Langlois knows which station is involved. Then, after 24 hours of announcements in the news bulletins, they eventually announced his death. No further mention was made of him. The population was a bit dismayed because they thought it was an important person. Finally, it was learned that it was the station which was going to change its initials, and the person who had died was the former station, and a new one was born. In this case, we could have taken legal action because it was a false piece of information. There is a specific regulation which provides that one has no right to broadcast a false piece of information. It was obvious that it was a case of levity and irresponsibility. However, it did not have any serious consequences, and it did not deal with a specific subject, because nobody's name was mentioned, which would have been very dangerous and very unpleasant for the family involved. Therefore, we did not take any legal action, we made an admonition.

Senator Asselin: Now, a while ago you said that under the Act—

The Acting Chairman: Senator Asselin,—

Senator Asselin: I apologize.

The Acting Chairman: Will you allow Senator Denis to speak and after that it will be your turn.

Senator Denis: Mr. Juneau, in my turn, I welcome you here and I congratulate you for the high position you are occupying. It is probably for this reason that you are not mentioned in the show, yet you are a French-Canadian. They mentioned famous people on page 9, such as Mr. Léger, our Governor General. Then, where are the Mitcheners, the Légers.

Mrs. Léger, finds the idea amusing:

> What type of work?

Then, Mrs. Michener says:

> Well, to apply the great seal, then the small seal to legislation, when you find it makes sense... Ah! ... where are the great seal and the small one?

Mrs. Michener:

> Here is the great seal and the small one is there in your hands. (SHE OPENS THE DOOR OF A WARDROBE AND ONE SEES A BIG MAN WHO IS MENTALLY RETARDED WHO IS GESTICULATING IN THE BACK)

This is the small seal our the great seal; who has the great seal in his hands? Do they mean Mr. Léger? Because the small seal, here it is written in French "s c e a u" which means a seal, but when speaking, it could also be "s o t", which is pronounced the same way and means a fool. So, do you find it strange that your name is not mentioned among those French Canadians who occupy high positions as cooks...

The Acting Chairman: He is not a "sot", which means a fool.

Mr. Juneau: They called me a small seal.

Senator Denis: ... as a cook, as a gardener, we do not see Juneau's name. To begin with, they speak of Queen Elizabeth, have you seen the program?

Mr. Juneau: I saw it again quite recently.

Senator Denis: Have you seen it?

Mr. Juneau: I have seen it again.

Senator Denis: Then, did you see the Queen jump five or six times on her throne, to the point where you could see the bottom of her panties? It is the Queen, after all. I think that for the Protestants she would have the same impor-

tance what the Pope has for us, Roman Catholics; do you think it is respectful? Do you think it is in good taste?

Mr. Juneau: As I said earlier, I am continouously asked to express opinions on specific programs and surely; I may have opinions on them, but I always carefully avoid expressing my opinions on a specific program. It is very difficult for me to make a distinction between my personal opinions and my official role in these matters.

Senator Langlois: He is more specific than I.

Senator Denis: Earlier, Senator Langlois quoted part of the Act, and I heard among other things, that the Crown Corporation, the CBC, belongs to Canadians. But the Queen does not say that; she says: These are my studios, my scenes, my costumes. Mr. Juneau is mine, the producers are mine. First, it is probably a lie. Then, the fact that a person who is our Queen, who as I say, is the Pope of the English, jumps several times on her throne like a mad person, as you saw for yourself, I think it is in rather bad taste. Don't you also think that it is disrespectful?

Earlier, they said that French Canadians are being ridiculed by giving them lower positions. I think there would be a position which is important enough to be respected.

Now, not only do they speak of the Queen, but of her husband as well, they call him Phillip and they speak of the Queen, what do they say? They say she sleeps in a single bed, in a single room, because Phillip comes back home late at night.

Senator Langlois: And he goes to bed late.

Senator Denis: What do you make of this, Mr. Juneau? Does it mean he is a womanizer or what? It is most disrespectful for royalty, is it not?

Then religion gets a going over too; they speak of Paul-Ëmile, cardinal Léger, they call him "Paul-Ëmile", and as Senator Langlois said earlier, there is the cardinal's palace, but it is nothing compared to the Governor General's. But they are palaces. Therefore, they say they have prepared a place for him if he should come. Moreover, further on they speak of "the former mansion of your brother-in-law, the cardinal's palace," by saying that "it is a bungalow in comparison!"

They also say "Trudeau's house, on Sussex Drive, would fit into it four times, so you could not possibly mistake one for the other!" Then, they speak of civil servants who are not too nice to French Canadians.

> On page 8, Mrs. Michener says: You know I was forced to fight for my provincial French (referring, in French, to a type of furniture) ... the civil servants wanted me to use federal English ...

Senator Langlois: It is a separatist message for civil servants.

Senator Denis: Englishmen are never involved where junior positions are concerned. There are only Italians, they tend to the beautiful gardens; yes, it is tended by Italians and concerning Acadians, listen to the Sagouine:

> My name was the Sagouine!
> I was looking for a good job
> I didn't find any
> I was offered to work here
> I jumped on it
> I was lucky
>
> Because I came from Acadia!

Is it not implied that Acadians have nothing else but this type of place where to work?

Now, we questioned Mr. David. We asked him who was revising, who was censoring, one way or the other, the reviews. On page 6 of committee proceedings, Mr. David said:

[*Text*]

> SENATOR DENIS: Was this show reviewed and authorized before being shown? Was it first seen by CBC officials?
>
> MR. DAVID: Yes. For this kind of show, the head of the department—in this case Mr. Jacques Blouin, head of the varieties department—usually reviews the text and then, if in doubt,—
>
> —he can ask the Programs Directorate and have certain things suppressed or added. There is also an aesthetic judgment to make, a very discriminated one.

[*Translation*]

Senator Denis: According to Mr. David's answer, it is not only Mr. Blouin who decides whether such a show must go through without anything being deleted or changed. In spite of the many obligations of the president, Mr. Picard, do you not think when a show is involved, it may be called satire, but I would rather call it malice or political innuendo—since the CBC costs at least $60 million, I think ...

Senator Langlois: Deficit.

Senator Denis: ... $300 million in expenditures.

The Acting Chairman: Over $300 million, if I remember correctly.

Senator Denis: Would it not be normal for the president to have somebody, that Mr. Blouin should ask someone to watch the program director, to inform him of what is going on. He said he had not seen it, he had not reviewed it. Mr. David also said he had not seen it. Do you not think the head of the CBC in Montreal is partly responsible when a show which lasts an hour, an hour and a half or two hours, is involved? Don't you think it should be the duty of a president to know what it is all about? I think so.

He answers us that he cannot review all that, because there are 60,000 hours of programs per year; but these 60,000 hours per year do not consist entirely of variety shows, there are concerts, hockey games, movies, or ...

Senator Langlois: Westerns.

Senator Denis: Or there are soap operas. During the year there are perhaps two, three or four variety shows in all, and according to them, they use satire galore. But sometimes this satire goes rather far. Therefore, I think it should have been at least his duty, because it would not have been live, they would have recorded it before. Furthermore, he had ample time to see the program again. He had ample time to tell somebody to go and see what it was about.

As Senator Langlois said, it is an encouragement to separatism, because in this show French Canadians are unjustly ill-treated, and Acadians as well. They have lower positions, whereas it is the English who manage everything, who decide everything. Furthermore, Confederation,

the Queen, the Governor General, the senators, the M.P.'s, the civil servants, are criticized without exception, all of them. All the party leaders as well. They are worthless, that one is worse, the other is dreadful, the senators have a lumber-room. That can be overlooked, but it is part of the system, of Confederation, the Queen is part of Confederation.

Now, in Quebec there is a separatist party which wants to separate from the rest of the country. Do you think it is normal that the CBC, a Crown Corporation, can make such propaganda to incite French Canadians to detest the English, and Canada as a whole, to become separatists?

This is nothing more than an encouragement for the separatists. I wish no harm to anyone. A Canadian has the right to be a separatist but he should not use the network, he should not take advantage of his job at the CBC paid by the Federal Government to endeavour to destroy the latter. I see nothing else. The majority of the CBC listeners in the Province of Quebec are French Canadians. Therefore, anyone, whether Dominique Michel or Pauline Julien are separatists, I could not care less, he has the right . . .

Mr. Juneau: Senator, I hope that you are speaking to the Chairman and not to me because I have had absolutely nothing to do with that program. I can listen to you until the end of the day if you want.

Senator Denis: But I would like you to understand what this show contains, even if you are not responsible for it.

Mr. Juneau: Yes, I am listening closely.

The Deputy Chairman: I think that the question Senator Denis wanted to ask Mr. Juneau is in what way, in what circumstances, the CRTC may intervene, according to the authority that the Act provides to it? I think that this is the intent of your question.

Senator Denis: This is my question and I do not think that Senator Langlois has obtained a satisfactory answer.

Senator Langlois: I told Mr. Juneau that I was not asking him to make a judgment. We can go further if I may speak on a point of order. I believe that Senator Denis, I do not want to have him say things that he has not said, but I believe that he is simply pointing out to Mr. Juneau what we do not like in that program.

Senator Denis: That is right, so that at least you, among the high officials, will know what happened.

The Deputy Chairman: I also think, Senator Denis, that the intent of your question is to ask Mr. Juneau, as the Chairman of the CRTC whether in the circumstances, it should intervene and how it can do so? I think that this is the logical conclusion.

Senator Langlois: We will not ask Mr. Juneau to speak on this today.

The Deputy Chairman: No, but according to the law, as it reads, I believe that . . .

Senator Denis: No, my intention is simply to tell Mr. Juneau that this show was a separatist show. Secondly, something should be done to stop this. This show is not the only case, this is well known. The program "Les Beaux Dimanches" has been used, if you read the official records of the Debates, you will see that the opposition leader in the Senate has declared that not only should we investigate on this but we should also make an investigation on many things that are going on at CBC.

Mr. Juneau: Senator, I would simply like—because I think that I should be polite enough to comment what you have just said, even if you have not asked any questions, because there is an implicit question in your remarks as told by Mr. Chairman. Consequently, if I may say something, I suggest that I understand very well that you have the right as any other citizen to your own opinion. You have the right to express firm opinions on a program such as that one. I think that in a position such as ours, we must defend the right of all to express opinions on programs.

However, I think it might be risky to ask an organisation such as the CRTC, even if it were to be replaced by an other organisation because we have replaced the BGR, thus to ask any organisation of the kind to intervene in individual programs. I think that the so-called remedy would be worse then the so-called harm.

Senator Denis: We have talked about supervision; your responsibility consists in supervising the stations, but what loss it mean exactly?

Mr. Juneau: In the case of programs, supervision, yes, but in the light of the rest of the text of the Act. It says clearly that in these matters, primary importance must be given to freedom of expression and when this is established it unavoidably implies abuse. What we accept as a democratic system, as a broadcasting system and as a press system is therefore based on freedom of expression. At the onset, this implies that there will be unpleasant things, abuse, errors of judgment, but that there will also be excellent things. But at the onset, it is accepted. If you create an information and entertainment organisation supported by the Government and it is incorporated in this system of freedom of expression, it is done according to Section 3 that the Chairman was quoting. In that case, I think that there is a certain price to be paid. It is the same as that which is paid when you accept a system of freedom of expression, it is tolerance, for the ideas that will be expressed and with which you do not agree. Moerover, some of the ideas that will be expressed may be false, abusive or sometimes harmful. Obviously, there will also be some satisfaction to be gained out of the good things. This is part of the game right from the beginning. I think there is a serious problem, when a policy as a whole goes against the intent of the Act, or where there is a particular expression that is clearly against an Act or Regulations. In that case, you must then bring an action before the courts. If you ask me, in that case, a technical advice, that is whether it is justified to bring an action before the courts, I think that all the lawyers would have felt that such an action would be useless and ridiculous.

Senator Denis: It is because I have here the policy of the CBC programs. It is again repeated in this policy: "Contribute to the development of national unity and constantly express the Canadian reality". There is another passage on national unity on the following page. The CBC attaches great importance to this passage in the Act which according to it, gives the essential aspect of its role, and the title is "National Unity". Very well. Someone who has seen this program cannot think anything else but that it tends to bring the Canadians apart. He cannot. He cannot think otherwise. He will say that everything that is federal is worthless. The Queen is worthless. The Governor General is worthless. The Senators are worthless. The Members are worthless. And so are the civil servants.

Therefore, I have a right to my opinion, as you say, but I think that there are many who think like I do, unless there is no will to see what is there. Unless one is a separatist.

The Deputy Chairman: Would you allow a question from senator Desruisseaux?

Senator Desruisseaux: First of all, I must point out to Mr. Juneau that I am not a member of the committee. I have been to the meetings any way and, we are permitted to speak with the witnesses that are present. To those who are here, I must point out that I have known Mr. Juneau for over ten years. For my part, I have only congratulations to address him personally even if I have not approved his ideas, especially when he was refusing me an increase of power. He said it was not justified.

However, I would like to ask one or two supplementary questions, even if I have to come back later. I am quite worried when the public opinion points out as it does at the present time, that the CRTC favors the CBC over other stations, in matters of programming. Before the electoral campaign we have on many occasions heard senator Langlois say in the Senate that there was abuse on television of political programs. For instance, some politicians appeared very often and when we added up the number of hours, it was found exagerrated and disproportionate. I think that Mr. Juneau knows what I am talking about in general. It is not necessary to give a specific case here but I have always thought that the CRTC had the task of revising somewhat the general programming I think that on this point, Mr. Juneau had done an extremely good job especially in the regulation of private stations. As for CBC, not that I have been influenced by those who have previously told me about this, but I definitely have the impression that it is protected by the CRTC. I may be wrong and I would like to be told that I am. But, in matters of the revision of programs and this is my question, following that of senator Denis how far does the CRTC go about this? And I add: during the meeting of the committee on November 28, Mr. David was saying that he is responsible for programs but that in such a program, there are several writers and that he does not have the freedom to amend the programming. He has not tried to do so because he was not free to do so. Therefore, I would like to ask Mr. Juneau, concerning the revision of the CBC programs, when it is necessary or when he receives quite a few complaints what does he do?

Mr. Juneau: This can be approached in various ways.

Senator Desruisseaux: Yes.

Mr. Juneau: I will try to proceed in the right order. As for your remark, that the CRTC favours the CBC too much, I think that this would bring a smile to the lips of many members of the CBC to begin with the chairman and going down because we here . . .

Senator Desruisseaux: This has little importance.

Mr. Juneau: No, but I would like to point out that we often hear the contrary. On the attitude of the CRTC concerning the general policy of the CBC, if I may, I will point out to you the decision of the CRTC dated March 31st, 1974, yes, that is right, March 31st, 1974. This is a document of approximately 250 pages on the policy of the CBC and in great part, on the programming policy of the CBC. You find there general opinions of the CRTC on the global policy of the CBC. Consequently, I do not think that we have neglected our responsibilities in this matter. I think that your question is not only on this point. You seem to be thinking of special programs: what do we do when we get complaints from the public on CBC programs? We try to respect this section 3 of the Act and we do the following. First of all, we send the complaint to the person involved in the CBC. We ask the CBC to explain the complaint received by this person. If we consider the explanation of the CBC insufficient, we insist that it gives a more satisfactory explanation for this complaint. Now, I must tell you that the insistence of the CRTC is much more practical, has much more importance, I will not say, has more weight, but it can be administered more easily. It is more credible. It has more practical importance if this is a program of opinions or informations where the opinions are more easily measured. For instance, recently, we have had a great number of complaints from the public on CBC programs on abortion, especially on the English network. Many people are complaining that the CBC too often show the point of view which is favourable to abortion, compared to the other one, that which is less favourable. Therefore, we have received a great number of complaints on this. We transmit them to the CBC to obtain an explanation, especially for the people who are complaining. We are witnesses, if I may say so, of the validity of the response. If, following these explanations, we evaluate,

Senator Asselin: Do you evaluate the validity of the explanation?

Mr. Juneau: Yes we do. However, if we definitely have the impression that maybe not the corporation itself, but the producer, or the section, or the station, because sometimes this applies to one station in particular, that one or the other had an attitude that was definitely biased and that the explanation showed so at that particular moment, we will intervene more firmly with the direction. I must say that in areas not concerning information as such, in the conventional sense of the word, that in areas where fiction, fantasy, irony, ordinary techniques of fiction are involved, it is then much more difficult, because there are so many intangible factors.

Senator Desruisseaux: Do you respect copyrights, that is to say do you admit that an author requires that no correction be made to the script?

Mr. Juneau: This is one thing that does not concern us at all. It is obvious that the direction of any radio or television station has the right to accept or to refuse a text. There is no doubt about this. Anyway, the Act is clear on this. The person responsible for what is shown on the television screen or what is said on the radio, is the owner of the licence.

Senator Desruisseaux: Then, if you allow me . . .

Mr. Juneau: The author definitely has the right to say "Sir, if you touch one line of my text, I withdraw it. This is the right of the author. But, the one who buys the text also has the right to say: Sir, I am not buying it.

Senator Desruisseaux: I would like to get additional information on one particular point: If you have reasons to feel that a program must be changed, what can you do in that particular case?

Mr. Juneau: We never interfere before a program is presented, never.

Senator Desruisseaux: But, for rehearsals?

Mr. Juneau: The CRTC never has access to a program before it is shown on the television screen, or presented on the radio, except, Mr. Senator, for commercials, where, in some areas, they are presented to the CRTC but voluntarily, by the sponsors. In the fields of food and drugs and publicity for children, the people who produce these commercials submit them to the CRTC in advance, in case they might invest a lot of money in the production of these commercials only to realize afterwards that they are illegal. Therefore, to avoid investing unnecessarily, they voluntarily submit their commercials to the CRTC who decides if they violate the Act or not. As for these programs, we never see them before there are shown by the owner of the licence.

Senator Denis: But I think that the CBC officials should do so. What do you think?

Mr. Juneau: Well, I think that everyone has his own opinions on the way that a radio or a television station should be operated.

Senator Denis: But what is your opinion?

Mr. Juneau: In my position, I will not give any personal opinions. The BBC director has his way of managing the BBC just as the directors of CTV have theirs; Senator Desruisseaux also had his way when he was director of CHLP, but anyway—

Senator Desruisseaux: In this case, he also had his criticism.

Mr. Juneau: Yes, but I think it is not the duty of the CRTC to tell license operators how to manage their own businesses. You may personnally agree or disagree, but it is not our task to interfere in these matters.

Senator Desruisseaux: So what would be an efficient way to achieve some result with a program such as "Les Beaux Dimanches"?

Mr. Juneau: I think, honourable senator, that the public opinion prevails and the management of the CBC, as well as the management of any other radio or television station, always has the responsibility of interpreting the Act, of interpreting its responsibilities in connection with its mandate, and of deciding, in a specific case, the way the editor of a newspaper would do, whether a given article is justified or not. In my view, this is a matter on which a judgment can scarcely be expressed from the outside. Let us take the present case for instance—and I will pass no judgment on this matter, but let us take it as an example. I think that you can have a satire, or a somewhat farcical show with relation to a political reality, and in one case, somebody will judge it and say, "Well, it is not that bad", but the other will say, "It is an outrage". I think this is a judgment which has to be made by people who are as near as possible from the ultimate authority. As for us, we are much too far from it. But this does not preclude the public, or the politicians, who are the representatives of this public, to express their views on it. But I think that it would be a misuse of our quasi-judicial power to intervene in these particular cases—unless we have a clear case of an offence to a particular Act.

Senator Desruisseaux: I think this is in the field of legal interpretation because you have the right to award or not to award a license, which enables—

The Acting President: For television, but not in the case of the CBC; I do not think that the CRTC has this right.

Senator Desruisseaux: I think they would have the same right.

Mr. Juneau: We do not have the right to take licenses back from the CBC. We would have the right of refusing its renewal, but as you know, this power must be used with a great deal of discretion. The Parliament decided there would be a CBC, and CBC stations. The CRTC could not decide overnight that CBC would no longer exist. I think this would be a position contrary to the spirit and the will of the Parliament, stating that there must be CBC stations. In a particular case, we have the right to refuse a license.

Senator Desruisseaux: As you just stated, there is a will of the Parliament, and in several instances strong criticism was addressed concerning some types of programmation by the CBC. Maybe Senator Langlois will refer to that later. But for my part, coming back to the program "Les Beaux Dimanches", I will ask the following: have you received any complaints? And, what has been done following those complaints?

Mr. Juneau: No, we did not receive any complaints as far as this program is concerned. Naturally, we have been made aware of complaints expressed in public by the members of the Senate, but we received no complaints whatsoever from the public, that is, written or official.

Senator Langlois: But usually, do you receive complaints concerning a program in particular?

Mr. Juneau: Quite often—on a daily basis, as a matter of fact.

Senator Denis: Concerning this program in particular, it has been stated that Mr. Blouin was the only one who had seen it. Mr. David had not; neither had Mr. Picard, nor any departmental official. It was stated:

[*Text*]

> MR. DAVID: I think it was only the head of the department.
>
> SENATOR DENIS: So, nobody else at CBC saw this show before it was televised?
>
> MR. DAVID: I, at least, didn't see it.

Mr. Blouin, the departmental head, contacts the program director only when he wishes.

[*Translation*]

Senator Asselin: You are speaking of the CBC itself.

Senateur Denis: I am speaking of this show, recorded before being produced, and we are told that Mr. Blouin is the only one who has approved it.

Senator Langlois: He is the last resort authority.

The Acting President: I will now give the floor to senators Asselin, Thompson and, afterwards, McElman.

Senator Asselin: I do not think that the last questions were actually answered by Mr. Juneau—those of senator Langlois.

You said to us at the beginning, Mr. Juneau, that the CRTC has a supervisory right on contents of the broadcastings. Am I mistaking when I say that?

Mr. Juneau: I do not recall having used these specific words, but if you want to ask me this question, I will say to you—

Senator Asselin: Yes, with regard to this matter, if you have this supervisory right, does it apply only after the telecasting of the show?

Mr. Juneau: Exclusively, yes.

Senator Asselin: As you said a moment ago, you do not have any supervisory right on the formulation of the broadcast?

Mr. Juneau: Never.

Senator Asselin: Do you also have, by virtue of the Act, a coercitive power, a dissuasive power?

Mr. Juneau: Not with regard to the production or the presentation of specific shows.

Senator Asselin: To bring compliance to the CRTC Act, these dissuasive powers you have, when you speak of dissuasive power, do they merely amount to representations made to a radio or TV station, or to the CBC, on a specific broadcasting, on which you have received complaints? Does that cover your persuasive or dissuasive powers on the whole?

Mr. Juneau: I might say that in cases where we consider that there was an offence to an Act in a program or a part of a program, if it is a serious and flagrant case, we follow suit.

Senator Asselin: Not necessarily all the time?

Mr. Juneau: In other cases, where it appears that there was an offence to an Act, and we do not know what would be the judgment of the court—and you can never know—and that the case does not seem to be serious to the point that a decision to follow suit would be justified, in cases like that we may merely make representations. Besides, we do not all agree on that. We were blamed several times for having made representations to them in similar cases, and I could give you examples.

Senator Asselin: Generally speaking, were these representations made following many complaints received by the people as a whole, on such and such program, or were these representations made or legal actions taken as a result of a decision of the CRTC, following shows that were already telecasted?

Mr. Juneau: Furthermore, we make representations very scarcely. Most of the time, we rather arbitrate between the people who file the complaint and the television station concerned, in order to obtain that the station gives a satisfactory explanation or that it corrects the wrong one which presumably was made. There was one case recently at Edmonton, where it was asserted that the CBC—I am sorry Senator Desruisseaux has left—but the CBC at Edmonton had telecasted at 7 p.m., if I recall, the result of a nudist contest. So at 7 p.m., at supper time, the children are there, and it was normal that we should have received scores of complaints. So we directed those to the CBC which in this particular case decided that it was no use to defend itself by saying, "we have done this because we thought it was a justified program for such and such reasons". On the contrary, they immediately presented, the next night, their apologies to the public, and the matter was settled.

In other cases, the CBC will answer, "yes, we have done this because we thought it was justified and here are the reasons why we uphold our position".

This is one reason. In other cases, there are pieces of information that seem to us clearly misleading—with intent or not—and I can give you an example.

If the case is serious, we follow suit. If it is not, if it is a matter of shallowness, we say, "Look here, this thing you did was stupid and please be careful in the future".

I have other examples in this field, though somewhat different. It is that when the opinion of a group, all depending on which group or what persons are concerned, if their ideas are unjustly reflected, and that the persons or the group concerned pretend they did not have the opportunity to express themselves adequately, with relation to something somebody else has said, in this case, we arbitrate. However it happens that the station, be it a CBC station or another, restores the balance by giving to the person the opportunity to defend herself. But sometimes the damage is already done. This occurred in one case where we made representations to a station.

Senator Asselin: Am I right when I say, Mr. Juneau, that as far as your persuasive powers are concerned, or your representation powers, your rights of legal action conferred to you by virtue of the law, am I right to say that they intervene when you have the formulation of a complaint which is serious in the view of the CRTC, or do you have within the CRTC a department responsible for the supervision of programs, which reports to the management of the CRTC? Moreover, does the CRTC take on itself the responsibility of action, whether by virtue of its persuasive right or by virtue of its representation power? Does the CRTC take action only when it receives a serious complaint from a group of taxpayers, of citizens, or if it takes the initiative of bringing to the attention of a radio or TV station, of a public agency, on this matter, by saying, "this has been done and we do not like it. Give us your reasons." I would like to know, what is the policy of the CRTC in such a case? Do you have a department responsible for the supervision of all those programs, which reports to the management, and then do you say, "we have seen this broadcast, would you please warn the station, make representations to it or take legal action? Or do you wait until you receive complaints from organizations, or tax payers with relation to some broadcasts? This is what I would like you to elaborate on.

Mr. Juneau: Yes, I will try to answer.

In cases of broadcasts which seem to constitute clearly an offence to a section of the CRTC Act or the CRTC Regulations, we do take this initiative. In the case, for instance, of this partisan broadcast within the 24 hours before an election, we took the necessary steps. In fact, I think we have lost in first instance, and we appealed, and then won. In the case of excess of publicity, it is the same thing.

So when a Regulation or an Act is concerned, when a program does infringe upon Regulations or an Act, yes, clearly, we take this initiative.

In matters of taste or of opinions on the contents of a program, we have very very seldom—and I would have trouble trying to recall one case in which it occurred—taken the initiative of intervening with respect to a particular program. And this is done purposefully. We think that the spirit of the Act was that licenses were given to people who were responsible of managing the programs this way, for the duration time of the license. If they operate poorly, to the point to which we have to take the license back, then we must take it back. But the spirit of

the Act is not that we should consistently substitute ourselves to the judgment of the license operators with respect to particular programs.

Senator Asselin: Let us take the specific case we have before the committee this morning. Senator Langlois has brought the program "Les Beaux Dimanches" to the attention of the Senate. We have held a committee to study this matter. You are before us, you have heard the grievances of senators Langlois and Denis; in your view, would this be enough to make representations to the CBC with this program, and to ask for explanations?

Mr. Juneau: I think that the attention of the CBC has indeed been focussed on this program for more than one year by the discussions which have taken place in the Senate. As I already told you, we never received any complaints from the public at the moment this program was broadcasted.

Senator Asselin: Would it have been better that Senator Langlois send you an official complaint by means of a Resolution or a Motion of the Senate, and following this complaint, would you have taken any steps?

Mr. Juneau: You are speaking of a hypothetical case. We assuredly would have studied the matter.

Senator Asselin: Maybe I am acting more like a lawyer at the present time.

Mr. Juneau: I would be glad to speak about that informally, because when I have to answer immediately, I always tend to answer in a rather detached manner. I think that carefulness would command, in a case like that, that I study your questions before answering.

Senator Asselin: There is another question I have had in mind for a long time. I think that the CBC should reflect canadian political reality whether it be federalism or separatism, but I think we must let government and private agencies free to reflect canadian reality.

Obviously, I completely agree with Senator Langlois when he says that this program, "Les Beaux Dimanches", was in such poor taste. If the intent was to stigmatize our federal system, I feel it was a very awkward way to do it and that such a program will not affect serious people who have their own views on canadian federalism. All the same, I agree with Senator Langlois that it was a program in very bad taste, a satire—it was obviously a satirical program.

Senator Denis: Too many of them are not serious.

Senator Asselin: Yes, but the people should always be free to think and to judge for themselves. Do you think that this canadian reality should be reflected by other means than these satirical programs we have? I really feel you can say, in terms of information, that if a radio station deals with certain political tendencies, this comes under the CRTC Act. I do not think that we could object in this regard. But, would it not be better, according to you, to establish a framework instead of showing that under the quise of satirical programs and limit ourselves to information, to dialogue, to the television "panel", rather than to leave it in the form criticized by Senator Langlois?

Mr. Juneau: Again, without giving a personal opinion on this particular program, I will first answer the positive aspect of your question. We have repeatedly stated our position on this before the CRTC, officially as well as informally and I have delivered many conferences, speeches—and I still do. My colleagues, and particularly the vice-president of the CRTC, do the same. I think that the principal theme of the CRTC is the importance of broadcasting, not only through CBC, but the importance of broadcasting in Canada, to help Canadians know each other better; that French speaking Canadians know their English speaking fellow citizens and vice versa; that the people from the West know better those from the Maritimes; that we know better the Eskimos and the Indians and the new Canadians, and soon in order that our country can better develop and survive in this modern and very competitive world.

Senator Denis: A measure of unity.

Mr. Juneau: That is what I think, and that is what I say in other words. We have expressed our opinion several times, by stating that this should not be done by trying to impose on Canada as a whole a uniform way of thinking. We try to take into account French-speaking Canadians, precisely Quebequers, and the way people think in the West, in the Maritimes, or in Toronto.

I have already been reprimanded on this by Senator McElman, and I share his philosophy on the subject. The CRTC has tried to defend a concept of national unity consisting of an increasing exchange of feelings and ideas from all parts of the country, and not of compulsory patterns divised in Toronto, Montreal or Edmonton and so on. But once we have such a pattern, we believe that it must be worked at intensively. We must have a strong policy in this regard. It is not a policy of uniformity, but a policy of unity based on an acknowledgement of this diversity.

Then, if you are interested, I could send you a very large number of documents from the CRTC on this matter, and especially the decision taken on March 31, 1974, where this question is discussed at some length.

The Deputy Chairman: Could we have this document?

Mr. Juneau: Yes. We will forward it to each member of the Committee of the Senate, if you want.

Senator Langlois: To each member of the Committee would be sufficient.

Mr. Juneau: So, honourable Senator, I think it would be a pity to state as a matter of policy that we should not . . .

Senator Asselin: As a framework.

Mr. Juneau: To establish a regulatory or informal guideline that we should not use fiction, recreation, songs or anything that is not a news item to reach the objective on which we are discussing—I think it would be a pity. It may well happen that a satirical program be unpleasant or excessive, or in poor taste, but, because a particular program is judged, maybe by a very large number of people, as being in poor taste, it would be a pity as I see it, to put aside the technique of satire, or the technique of fiction. I think it would be a pity.

[*Text*]

Senator Thompson: Mr. Chairman, first of all, I want to say that I am not a member of the committee. I also should say that I am associated with a radio station, in connection with which I have faced the stern hand of Mr. Juneau, and respect him very much for the decisions he has been making.

It seems to me that this is a French language question, since it concerns a program that was shown on the French language network. I did not see the program, but I have looked quickly at the content as it appears in the script.

Mr. Juneau represents the whole of Canada. I was very interested in his approach to criticism by the Senate committee, because what would apply in connection with French language stations would also apply in connection with the English language stations. The approach which has been taken by the committee, as I understand it—although it is not in the report of the previous meeting of the committee or in what was said by Senator Langlois in the English language press—is that the concern of Senator Langlois is on the general policy. That is the concern, it seems to me, that he has as to the general editorial policy of the French language CBC towards separatism.

On the other hand, if it were a question of one particular program and the taste of this particular program, then I must say that I do not agree with criticism. I think it is a very healthy thing, as I understand the words within section 3 of the act, "to safeguard and enrich". I understand that one way to protect and enrich our society is to take a good wallop at any stuffed shirts.

In Britain today there is a very healthy discussion going on in connection with the salary of the Queen and whether she is being paid too much. It is a very healthy discussion, in my terms, on whether they should have paid for the plane that took her to the Bahamas and there is a very virile discussion by a Scottish member, every time that the appropriations paid to the Queen come up. *Punch* and a number of other papers, I think, contribute to the diversity of Great Britain by the fact that they challenge the Queen or the House of Lords and make fun at them.

I think one of the diseases that takes place with higher civil servants or senators and others is the disease of pomposity. And we should be open to criticism, satire and ridicule. So I am not objecting to that at all. I think it is healthy.

Last night there was a page of criticism with respect to the cost of the Queen. I fell that the matter of taste—and I think and hope that this is what I drew from Mr. Juneau's remarks, that he would be very reluctant to decide what is bad taste and what is poor taste and his approach is that in some cases this may be poor taste but on the whole permitting a great deal of diversity, we get a very rich society and a very rich Canadian content. I hope I have asked the question, but that is the conclusion that you make?

Mr. Juneau: I think that that represents our position quite clearly.

Senator Thompson: I would say that I think I have been in the minority, in previous criticisms made in the Senate about some CBC programs. I saw one evening a very beautiful program, to my mind, of a French Canadian girl who fell in love with an Engligh Canadian boy from British Columbia.

Senator Asselin: That could happen.

Senator Thompson: I think it depicted with sensitivity and with dignity this love affair that they had. I came to the Senate and I was sitting in my seat and someone got up and talked about the obscenity that had taken place on the program on the CBC in which a boy and girl got into bed. I did not connect it with this program, which I had loved and which I thought was doing something for the unity of Canada. Afterwards, I wished I had got up and said how much I enjoyed the program. I am saying this to express the difficulty the chairman must have and that the CBC must have, because my view of what is bad taste obviously differed from that of other senators.

Could I say one other thing? If there is any impression that the Senate should be the censoring body to make decisions on what the content of the CBC should be, I would deplore that and resist it with every power I have, because I can think of no stuffier body to be deciding what the content across the country should be than the Senate, which has seen the tragedy of Rodin and others who had to go before bodies and others in order to have decisions made about their artistic creativity and I would hope that this would not be a role for the Senate.

The Deputy Chairman: I do not think it is the role the Senate is going to play or wants to play. I think the purpose and the reason why Senator Langlois raised that question and referred that matter to this committee, was that parts of that program—and other programs, this program was only the occasion but there were other programs particularly in Quebec. I understand your point of view, but you do not live in Quebec. You don't understand exactly.

Senator Langlois: Quebec has never been understood by Ontario. That is nothing new.

The Deputy Chairman: I am not going to say that. You can say what you want. The purpose of Senator Langlois was to bring a matter to our committee and to the Senate, so as to draw the attention of the CRTC and the CBC, that they were going against the aims or the purposes of the establishment of the CBC.

Senator Denis: Hear, hear.

The Deputy Chairman: That was his purpose. It was not in order to criticize the programming but what has been conveyed through that program and other programs. That is the purpose.

Senator Thompson: Mr. Chairman, I appreciate that you are underlying that purpose. At the start of my remarks, I wanted to say that as I understood from the tenor of this meeting, it is the concern of Senator Langlois that the general editorial policy of the French language station, not a particular ridiculing program, that he is focussing on. I said that, in reading in the English speaking papers the reaction to his remarks, it was not a suggestion that he is concerned about the Senate and some high officials, including the Queen, being ridiculed, rather than his deep concern about a general editorial policy, a consistent policy which is emphasized in more a separatist approach than that of the unity of Canada, and I take it that you have underlined that.

The Deputy Chairman: Yes. I call Senator McElman, unless Senator Langlois has something to add to what I have said. I tried to express the reason why he brought the matter before the committee.

Senator Langlois: You did a good job. I made that clear and once again I am not surprised to see that the Ontario papers have misrepresented the attitude of French Canada. It is not the first time.

The Deputy Chairman: We will leave the matter at that.

Senator McElman: Mr. Chairman, I think it is a very healthy thing that this committee is discussing this matter and that Mr. Juneau has come before us to hear the views of the members of the committee. I think it is also a very healthy sign for Canadian Confederation that the reaction to this program—as one of a number of programs, but specifically this program—has been most strenuously expressed by those senators who represent La Belle Province. I think that is a very healthy sign in the defence of the institutions that we enjoy.

Having said that, I say we seldom have Mr. Juneau before us and I enjoy all of his appearances. Sometimes we do not agree, but I enjoy them. There is a temptation to try to broaden the scope of our reference here today.

Mr. Juneau: I cannot say "be my guest." I am your guest.

Senator McElman: I hope that at some future date we will discuss what I believe to be the preponderance of violence and crime shown in the general programming on television. I think that would be a useful discussion. In line with the discussion presently under way which hinges largely on Canadian unity, which is part of the mandate of the CBC, I was offended on the weekend by the news coverage on both of our national networks, CBC and CTV—it was on Friday, February 14, Valentine's Day—on the tenth anniversary of our Canadian flag.

CBC is first in New Brunswick, I should say, as we get it at 11 o'clock in the national news, and CTV at 12 o'clock. CBC first dealt with the fact of it being the anniversary, by referring to the difficulties that accompanied the adoption of the flag and the only person who was shown commenting upon it was the person who had led the opposition to the flag. I might have felt that it could have been useful and balancing if some young Canadian, under 10 years of age, had given his reaction to his feelings for the flag. I was shocked by this and I thought it was not very respectful for the flag that we have adopted and imbalanced coverage of it. That was a personal reaction, and I said to myself: "McElman, as usual, you are overreacting." Then I watched at 12 o'clock the CTV coverage. One would have thought the same producer had handled both, because the same person was on who had led the opposition to the flag and there was no counterbalancing whatsoever.

The point of this is that I agree with most senators who have spoken, that watching television over a period of time one does occasionally at least get the view that it is, not balanced as it should be, that there is a preponderance of programming, of editorial thread, running through the program which does not support the mandate which is given to the CBC that it has a responsibility to promote Canadian unity. Having said that, I believe that Parliament was wise in not establishing the CRTC as a censor. I think it would destroy the CRTC and would destroy democracy to the extent that broadcasting may take part in it.

I think it was wise that it established CRTC to perhaps monitor what goes on in broadcasting, after the event, rather than censor it in advance of the event. It is that that I would like now to question our witness about. I understand thoroughly that you mentioned commercial content some while ago, and it is my understanding that in so far as there are limitations on time of commercials in programming, that the stations are required to submit copied of their logs. Is that right?

Mr. Juneau: That is right, sir.

Senator McElman: And it is in this mechanical fashion that you monitor what they are doing, rightly or wrongly?

Mr. Juneau: Not only that. We also have become better organized. I am not suggesting that it is a perfect system, but we have become better organized in monitoring stations while they are on the air. We do not do that constantly, of course, but we do spot checks. Just like people pass on traffic lights and get away with it, it is inevitable that the same kind of thing will happen in radio or television. But we do have monitoring of the signals.

Senator McElman: But there is a machine there, whereby you have some control and you monitor the log?

Mr. Juneau: That is right, yes.

Mr. McElman: I was amazed to hear that you had not had public complaints on this program. In a specific program where there is public complaint, you get immediately a feed back that starts the machinery moving within the CRTC to determine whether some action should be taken? Is there a machinery that operates without being moved by public complaint? It has been suggested that over a long period of time there is an editorial thread that runs through the programming, particularly in Quebec with the French network, that leans towards separatism, perhaps. Where there is such a thread, are you dependent upon public complaint, or do you have any mechanism that monitors to check whether a particular station, a network, or any element of the broadcast media coming within your purview, is developing a trend of editorial approach which is contrary to the mandate for national unity?

Mr. Juneau: We do not have that. We do not monitor programs in order to determine whether we shoud take any kind of action, legal or unofficial, in matters of taste—and I think I am repeating myself. We do not do that. We do monitor in relation to very specific things, but I think that is not your question. Your question is, do we monitor programs in order to detect whether there are trends which would be contrary to the spirit of the law. We do not do that in a systematic way, if by that one would mean checking and calculating meticulously and almost mathematically whether there is an imbalance in the representation of certain views, as against other views. No, we do not do that. I would not call that monitoring because that implies a spirit of surveillance, so to speak, and we do not do that. I am not saying that we should not do it. If there were strong indications that such trends are really nefarious, then I presume it would be part of our responsibility to verify whether there is a strong problem or not. We are not doing that kind of thing.

We do, however, feel that we are not only responsible for watching, in a sort of a police way to see whether there is something wrong or not that is going on. But we feel that we are part of broadcasting, we are not only watchdogs, as people have sometimes called us in the past, but we are part of the whole thing and our role is to work with the broadcast in CBC and private broadcasters, to try to improve the standards generally, including the standards you are talking about. In order to do that, we have people who watch a lot of television. They are not sitting with a cap on and checking, but we find that we could not do our job if we didn't have people who are very good television watchers and radio listeners, just to understand what is

going on. Out of that, we develop opinions concerning the present value of television generally or of the CBC particularly.

We sometimes write about that. Or, in a less official way, I may make a speech or the vice-chairman may make a speech, and express views. We have often expressed the view, for instance, that there could be, on both the private sector and the public sector, much more programming which would contribute to the identification of the country and the unity of the country, both on the English side and on the French side, and not only the French-English thing, but as you pointed out on other occasions, the east and west and north and south and what have you. We do that, and we do express views. For instance, if you are talking about the editorial tone of broadcasting in general, we think—we are not the first to say it; it may be true for newspapers, too—there is a certain appetite for the sensational; there is a certain tendency to deal more with the negative than with the positive; there is a certain tendency not to be interested in success; there is a tendency to ignore certain themes, certain areas. Engineers, for instance, will talk to us very often and say, "How come there is scarcely anything said about what is going on in engineering?" It is news; it can be very dry and drab if it is thought of only in terms of figures, but some of it must be interesting.

I remember the man who was in charge of the development of the Alouette and Isis satellites in Canada telling me that several years ago they invited broadcasting reporters to go to the launching, from Cape Kennedy I suppose. I will not identify the people involved. They had accepted. It was going to take place. Finally, at the last minute, they cancelled their acceptance to go down there to watch the launching of Alouette. I think it was the first launching, so it was very dramatic and very important. It was a great story of an engineering and communications type. The intention to go was changed because some racial disturbance had occurred in Alabama and they decided to cover that rather than the launching. That is an editorial decision. Everybody is free to make decisions of that kind, but I think everybody is also free to look at these trends and comment on them and say, "How come?"

I had a very interesting letter, quite a long letter, from an engineer, not vituperating or harshly criticizing, but saying, "Scarcely any attention is paid to our field. We know it is difficult and intricate, although not necessarily more intricate than political matters, and there must be a way to make it interesting.". After all, so much of what we live with today is the result of engineering decisions. I sometimes feel that too many things that we have to cope with are the results of engineering decisions that the public knows very little about, yet we have to live with that afterwards.

One phrase we have for it is the "missing themes in information." You could set up a long list of themes that are scarcely ever dealt with, or dealt with very little. That sort of thing we do; not, as I say, as watchdogs but as people who are positively involved with the development of this medium.

Senator McElman: I appreciate the complexity of the problem you and your colleagues face today. I was glad to hear of your reaction that perhaps not enough is done with respect to monitoring.

Mr. Juneau: I would acknowledge that.

Senator McElman: I too would not want to see you become part of a policing exercise; I do not think that is your purpose or your role. You mentioned trends that might be missing from the general tenor of broadcasting. I think the concern here has not been what might be missing, but a trend that might be overly present in broadcasting, namely attacks upon the institutions and the system that we enjoy.

I realize that there are peaks and valleys in public opinion and public interest, but if the public should become passive about what it sees on television and hears on radio, and, as some might suggest, because there is no reaction to a program the public is passive, it seems to me that your mandate requires that there be a fair element of monitoring, particularly with respect to how it has an effect upon national unity. If on occasions the public reacted to a series of programs that could be interpreted as being anti-Confederation, by saying, "What the hell! There is nothing we can do about it, anyway," if you got no reaction at CRTC, if the CBC got no reaction to its programming, and if the private broadcasters got no reaction to their programming, simply because the public had become passive, then there should be some mechanism, some continuing mechanism, that fills that vacuum. I would suggest that, if nothing else is accomplished by this reference, if the CRTC and others in responsible positions in connection with broadcasting have a look at this, it might be very useful.

Mr. Juneau: Your point is well taken, senator. I think I can say, though, that there are many people who acknowledge that there has been an improvement over the last few years in broadcasting in general towards greater interest in the problem of national unity and reflecting various parts of the country one to the other. A lot of people acknowledge that development, both in the CBC and in the private sector.

With respect to the CBC, I have not heard people say that on the French network, whatever one may think about this particular program, there has been a deterioration. We generally hear the opposite, that there has been a considerable improvement. I like the way the President of the CBC puts it, because I remember re-reading recently his explanation.

It is a very difficult matter. If you look at the printed press, some of the problems that are being discussed here exist in the printed press. I know that some members of the Senate will say, "You are right, but this is different. We created the CBC for this or that purpose." That is true. Yet the CBC has been created as part of the press, in a way, and it cannot get away from the rules that apply to the press. That is part of the price you have to pay if you create an organization such as the CBC. It has to follow the rules of the medium in general, and the law, of course.

Starting from this premise, the President of the CBC has expressed the view that their attitude has been to use the rules of the press and try to obtain from the people who work for the CBC, either the staff or people the CBC employs, a high level of professionalism. That is something that honest people find difficult to resist, if you call upon a sense of professionalism. Some people have fewer acute feelings about this matter than others, but it is an interesting way of approaching a very difficult problem, for both the CBC and the printed press to say, "Let us insist on a higher and higher level of professionalism; not with a political bias in one sense or another, but a higher level of journalistic professionalism." That may constantly leave

some problems unsolved, but I it would solve many problems.

I have met a number of individual journalists in the broadcasting medium, including groups of journalists, unions, union officers and so on, and I know that many of them—I am not saying all, by any means—whatever their political bias may be, are personally very much concerned about the ethics of the profession, whether they work for the CBC, for a private station or for a newspaper. I have very often encountered a high degree of concern about the ethics of the profession and what I call professionalism. I am not saying that this concern has yet had results that should be considered as satisfactory by all those involved, and I do not think these people consider that either. However, I think it is an interesting way to approach the problem.

The Deputy Chairman: Before further questions are asked, may I draw your attention to the fact that it is already twenty-five minutes to twelve, and we have two or three other matters that I would like to discuss with members of the committee before we adjourn.

(*Translation*)

Senator Langlois: I will be as brief as possible. I, myself, was going to bring the late time to the attention of the committee.

The Deputy Chairman: Yes, because we have two or three items to examine.

Senator Langlois: I will make very brief comments on what my colleague, Senator Thompson, said. Maybe I overreacted to his remarks but I will say that if one had attacked his right to criticize me, I would have reacted even more violently to defend his attitude and his right to do so.

Now, to explain to the committee the reason why I really had the intention to bring this program to the attention of the Senate, I must say first, that it was not for the Senate to substitute itself to the CRTC nor the CBC; I wanted the Senate to study it in depth. So, if you share my opinion, you should study the way the CBC and the CRTC should apply their governing statute. The Chairman of the CRTC, Mr. Juneau, has—as I had done before him—emphasized section 3 of the Act. Here are the main provisions of this section. Paragraph (a) creates one single broadcasting system in Canada which is public property and comprises public and private elements.

Paragraph (b) states that this system should be operated by Canadians so as to safeguard, enrich and strengthen the cultural, political, social and economic fabric of Canada.

And then there is paragraph (c), which the Chairman has emphasized, that concerns mostly the concept of freedom of expression subject only to applicable statutes and regulations.

This is the act I am actually talking about. It is the one that establishes the CBC and I will read section 39 of this Act stating its objects and powers:

> The Corporation is established for the purpose of providing the national broadcasting service contemplated by section 3, in accordance with the conditions of any licence or licences issued to it by the Commission and subjected to any applicable regulations of the Commission, and for that purpose the Corporation has power to

Then the objects of the Corporation are enumerated. But, section 3 is subject to regulations of the CRTC. I will now read you paragraph j) of section 3 stating the regulating power of the CRTC:

> j) the regulation and supervision of the Canadian broadcasting system should be flexible and readily adaptable to the scientific and technical advances; and

—and I underline this part—

> that the objectives of the broadcasting policy for Canada enunciated in this section can best be achieved by providing for the regulation and supervision of the Canadian broadcasting system by a single independent public authority.

So, the principal aim of the CRTC is to supervise and regulate the application of this act. For this reason, and because I had some doubts, I thought it best to bring this program to the attention of the Senate, mainly because the first time I saw this program I was in my own town of Quebec City with a group of friends and they unanimously reacted against this program. They thought it was going too far and it was a bit shocking; that this was clearly a separatist message for the people. As it is the responsibility of the Senate and of each senator to express the regional views of the country, I thought it my duty to make known to my colleagues the opinions I received not only from my friends on that night but also the next day in my legal study and from contacts with the population of Quebec City. As I had myself the same reaction, there was only one step to take, that is make this sudden reaction known to the Senate who fully endorsed my motion of reference to this Committee. I think it was only my duty to say this.

I would also like to ask a question to Mr. Juneau. Would he have any objection to provide to our committee a copy of the regulations prescribed by the CRTC concerning the research and the objectives spelled out in the Act I have just mentioned?

Before leaving the floor to another senator, and particularly to Mr. Chairman, I would like to add that maybe this morning we have created a false impression. We have asked Mr. Juneau if he had received any complaints? He replied no. There weren't any other comments. Maybe we have given the impression to those who were not present at the first meeting of this committee that there were no other complaints about this program.

Mr. Chairman, you must remember that we asked a similar question to CBC officials and they had answered yes. They sent us a list of the complaints. Unfortunately, we did not get the letters, but at least we did receive a list of the complaints as well as their reasons. They were quite numerous and came mostly from the province of Quebec and from the City of Ottawa. We have the number as well as the nature of the complaints phoned in. From Montreal, I think that there were 116 negative telephone calls and 70 or 72 positive. Others were calling for information without apparently complaining. It depends on the interpretation given by the telephone operator who received the message. Anyhow, there were complaints and quite numerous at that. There were also comments. So, I think we are quite justified to refer the appreciation of this program to a committee and to invite Mr. Juneau and CBC officials to come and give explanations. They could tell us the way they fulfill the objectives of this Act on Canadian broadcasting. Both the Senate and the House of Commons are responsible for ensuring that public servants respect the aims set out in our Statutes. This is the only goal I had in

mind. I did not want the Committee to substitute itself to Mr. Juneau who, I think, does an excellent job. I would like to thank him for being available this morning.

[*Text*]

The Deputy Chairman: I am quite sure that Senator Thompson understood what Senator Langlois said, but I think it would only be fair to give Senator Thompson the occasion to say a few words, if he wishes.

Senator Thompson: I will be brief, Mr. Chairman. It may be owing to my Irish temperament that many people think of me as an "imp," when I try to clarify matters in order to support them. If I understood correctly Senator Langlois' concern, it was that he wants to ensure that the objective of the CBC, whether in French or in English, is to emphasize the unity of Canada, so that if there is a consistent and persistent editorial policy by one sector, whether in French or in English, to suggest or promote disunity or separatism, then very rightly he has a grave concern, as other senators have mentioned.

I do not live in Quebec. I do not see the programs.

Senator Langlois: You are really missing something.

Senator Thompson: I would say, however, that this was a legitimate matter to raise, so long as it is not just picking on one particular program, which we look on as perhaps having shown bad taste. I was trying to clarify that that was not the situation which Senator Langlois was emphasizing. But the opinion I formed afterwards, from reading and from talking to people, was that that was the impression created in some of the English-speaking press, and I wanted to clarify that it was a much broader picture that he was looking at than had been presented to Mr. Juneau, and I substantiate his position.

Senator Langlois: Mr. Chairman, I am happy that Senator Thompson referred to the fact that he has Irish blood. My wife has Irish blood, too, but she reacted in the same way as I did.

[*Translation*]

The Deputy Chairman: Mr. Juneau, after listening to my colleagues' remarks, would you have any suggestions to make so that these unpleasant things do not happen again? Is the CBC control system adequate and could it be improved? Could CBC directors—if I understand correctly, there are 14 according to the Act—be more cautious about programs aired on TV or radio? If you would rather not answer, do not feel you have to. With your experience, you might help this Committee formulate suggestions to authorities, either of the CBC, the CRTC or even of the government, because we have to come to conclusions and offer some suggestions to correct the situation, since complaints have been received. We know by experience that most people do not write or complain.

Senator Langlois: The silent majority.

The Deputy Chairman: The silent majority. That is why we cannot rely only on complaints made by the general public. Personally, I feel it is the responsibility of the CBC and CRTC authorities to take the necessary action to prevent the reoccurrence of such events.

Senator Asselin: Mr. Chairman, are you not actually going into a very difficult field? If we start asking for directions, should we not also talk about the whole issue of freedom of the press? I think that all those questions are interconnected and that it is very difficult for our witness to answer. I am not defending him, for he surely is able to do so himself.

The Deputy Chairman: With his experience, the witness could point out the insufficiencies or the fact that the control board is not adequate. Someone said a while ago—it was Senator Denis—that only one person, Mr. Blouin I believe, had seen the program. Is there a lack of consultation between the authorities at CBC? Is there enough supervision?

Senator Langlois: Mr. Chairman, we could maybe let Mr. Juneau think for a moment about what he is going to answer to your question which is rather embarrassing. May I draw the Committee's attention to the fact that we were referred to complaints; that it was evidenced, during the first hearing, that certain persons were discouraged from complaining to CBC, amongst other things, because of the unwelcoming way that they were answered on the phone. I even think that you were the one to put on record that people were very badly received.

The Acting Chairman: Please feel quite at ease, Mr. Juneau; if my question is too embarrassing—

Mr Juneau: I am afraid I will disappoint you. I would say that we have, I believe, received no complaint with regard to this program. However, I must say that, in general, we receive less complaints from the French listeners that from the English ones.

Senator Asselin: They are more broad-minded.

Senator Denis: They are more numerous.

Mr. Juneau: I don't know, but I also think that this might be the reason. We are getting here into interpretations that may be misleading, because in general the French are more reluctant to get in touch with government organizations. It is probably true for the municipal governments and for the provincial government in Quebec, but in any case, we received more complaints from the English listeners.

Senator Denis: They are more numerous.

Mr. Juneau: Proportionally. I think it is a question of attitude. They have less communication with official organizations. I think however that because of the spirit of the law, here again, we will have to establish some lines of action. Mr. Chairman, the spirit of the law is that in editorial matters, decisions must be taken by the management of the stations. I remember very well the remarks of Senator McElman, which are very appropriate and of which we will take advantage. But in editorial matters, individual decisions must remain the responsibility of the management of the stations.

Senator Langlois: Subject to the regulations.

Mr. Juneau: Yes. Complaints represent then a reaction of the public, just like the reaction of a Committee like this one, and it is a very normal process. Within the process, the complaints are not useless. That's how the public can participate. That is why we direct these complaints to the responsible persons. I think that the way this responsibility is carried out within the stations depends on the holder of the license. In this case, it depends on the management of CBC, on its administrative council, on its president and on the senior officers of CBC, and very indirectly, on the CRTC.

The Acting Chairman: Thank you, Mr. Juneau. If there are no other questions, I would like to thank Mr. Juneau, in your name and personally, for having accepted our

invitation and providing us with information that will help us write our report to the Senate. Here again, I want to apologize as, in December, you presented yourself and had to wait for two hours. As we have explained, however, it was not our fault.

Once again, thank you. I hope that we will have the pleasure of seeing you again in the future.

Le comité suspend ses travaux.

Published under authority of the Speaker of the Senate by the Queen's Printer for Canada

Queen's Printer for Canada, Ottawa, 1974

Government Publications

CA1 YC14 T52



FIRST SESSION—THIRTIETH PARLIAMENT
1974-75

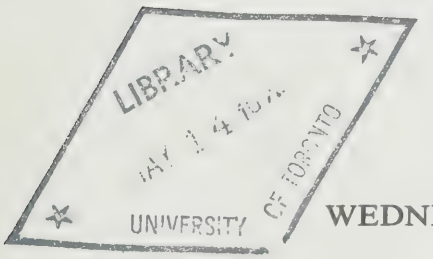
THE SENATE OF CANADA

PROCEEDINGS OF THE

STANDING SENATE COMMITTEE ON

TRANSPORT AND COMMUNICATIONS

The Honourable MAURICE BOURGET, *Deputy Chairman*



Issue No. 6

WEDNESDAY, MARCH 12, 1975

Second Proceedings on Bill S-5, intituled:

"An Act to enable Canada to comply with a Convention on the International Recognition of Rights in Aircraft"

(Witnesses: See Minutes of Proceedings)

28343—1

STANDING SENATE COMMITTEE ON
TRANSPORT AND COMMUNICATIONS

The Honourable J. Campbell Haig, *Chairman*

The Honourable Maurice Bourget, *Deputy Chairman*

The Honourable Senators:

Blois	Lawson
Bourget	McElman
Burchill	Molgat
Davey	O'Leary
Denis	*Perrault
Eudes	Petten
*Flynn	Prowse
Forsey	Riley
Graham	Smith
Haig	Sparrow
Langlois	Welch—(20)

(Quorum, 5)

**Ex officio members*

Order of Reference

Extract from the Minutes of the Proceedings of the Senate, October 23, 1974:

Pursuant to the Order of the Day, the Honourable Senator Giguère moved, seconded by the Honourable Senator Fergusson, that the Bill S-5, intituled: "An Act to enable Canada to comply with a Convention on the International Recognition of Rights in Aircraft", be read the second time.

After debate, and—
The question being put on the motion, it was—
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Giguère moved, seconded by the Honourable Senator Fergusson, that the Bill be referred to the Standing Senate Committee on Transport and Communications.

The question being put on the motion, it was—
Resolved in the affirmative.

Robert Fortier,
Clerk of the Senate.

Minutes of Proceedings

March 12, 1975.

Pursuant to adjournment and notice the Standing Senate Committee on Transport and Communications met this day at 9:30 p.m.

Present: The Honourable Senators Bourget (*Deputy Chairman*), Burchill, Denis, Eudes, Forsey, Graham, Langlois, McElman, Petten, Prowse, Riley, Smith and Sparrow. (13)

Present but not of the Committee: The Honourable Senators Asselin and McGrand. (2)

In attendance: Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel; Mr. L. Shields, Solicitor, Legal Branch, Ministry of Transport.

The Committee proceeded to further consider Bill S-5, "An Act to enable Canada to comply with a Convention on the International Recognition of Rights in Aircraft".

Witnesses:

RoyMarine Leasing Limited:

Mr. Henry S. Miller, President;
Mr. A. Derek Guthrie, Legal Adviser.

Canadian Bankers' Association:

Royal Bank of Canada:
Mr. G. A. Bellevue, Assistant General Manager (*Corporate Lending*);
Mr. W. N. Ancuta, Corporate Counsel.

Canadian Imperial Bank of Commerce:
Mr. F. G. Stanley, Inspector—Credit Division

Mr. Colin C. Coolican, Counsel.

Mr. G. H. H. Read, Observer.

Equipment Lessors Association of Canada:

Mr. Glen Langdon, President;
Mr. B. Frank Kennerly, Counsel.

After discussion and upon Motion it was *Resolved* to refer the subject-matter to the Steering Committee in order to determine what further action should be taken.

At 12:20 p.m. the Committee adjourned to the call of the Chairman.

ATTEST:

Mrs. Aline Pritchard,
Clerk of the Committee.

The Standing Senate Committee on Transport and Communications

Evidence

Ottawa, Wednesday, March 12, 1975.

The Standing Senate Committee on Transport and Communications, to which was referred Bill S-5, to enable Canada to comply with a Convention on the International Recognition of Rights in Aircraft, met this day at 9.30 a.m. to give consideration to the bill.

Senator Maurice Bourget (*Deputy Chairman*) in the Chair.

The Deputy Chairman: Honourable senators, this morning we are dealing with Bill S-5, an act to enable Canada to comply with a Convention on the International Recognition of Rights in Aircraft. We have with us three organizations, the first being RoyMarine Leasing Limited; Canadian Bankers' Association; and Equipment Lessors Association of Canada.

I will ask Mr. Miller and Mr. Guthrie, representing RoyMarine Leasing Limited, to come to the table. All members of the committee have a copy of the brief which was sent to us by RoyMarine Leasing Limited. Mr. Miller will make an opening statement, following which members of the committee may ask questions of both Mr. Miller and Mr. Guthrie.

Mr. Henry S. Miller, President RoyMarine Leasing Limited: Mr. Chairman and honourable senators, over the past 18 months our firm has been very deeply involved in the legislative process in the hope of amending the present Bill S-5. We have discussed the implications of the bill with various members of government, within the financial community, and with manufacturers of aircraft and aerospace products. Having studied in detail transcripts of hearings held before the Senate and other committees, the major point of attention seems to be focused on refining legal principles. I find it peculiar and somewhat unfortunate that the essence of the matter has not yet been brought before the persons charged with formulating the law, namely, how aircraft are financed in today's environment, and the concerns of financial institutions in this respect. Nothing would seem to be more important in attempting to promulgate a bill of this nature than to understand why it is necessary at all in the framework of the real world. My comments today with respect to Bill S-5 consequently relate more toward what we would call business points than legal ramifications. Mr. Guthrie of the Ogilvy, Cope firm, and Mr. Kennerly of Canadian Pacific and the Equipment Lessors Association of Canada, are prepared to respond in the latter regard.

One has to consider the aircraft financing problem in the context of world financial instability and the exceptionally high capital cost of aircraft. Commercial jet aircraft in Canadian service today range from the Dutch-built Fokker F-28 to the Boeing 747, and cost from a minimum of about $5 million to as much as $35 million apiece. Prices of individual units depend on whether the aircraft are new or used, the configuration, model type, and the extent of modifications beyond the base price. Jet engines, furthermore, can cost in excess of $1 million each. As is apparent to one familiar with lending or leasing credit evaluations, even the strongest company is severely impacted by the acquisition of equipment with as high a price tag is noted above.

Many financial mechanisms can be employed to fund the acquisition of aircraft including, inter alia, term borrowings in any of their many variations, conditional sale agreements, and leases. Depending on the method employed, ownership may rest with the user—that is, the airline itself—or it may, in fact, be owned by a third party financial institution and leased for a designated period of time to the airline. The most important criterion behind the willingness to extend credit is confidence in the client's ability to service the obligation incurred. Regrettably, airline earnings are minimal at best. Current trends in cost escalations and diminishing traffic do not provide encouragement or a feeling of optimism, especially for the near future. Moreover, inasmuch as the term of aircraft financings typically extent over the major portion of the aircraft's useful life—10 to 16 years in most instances for new aircraft—a considerable long-term risk is inherent in the financing decision, risks exceeding those shared or borne by many other creditors. Generally speaking, the stronger the substance of the borrower of the funds, the less the concern one has with the actual realizable value of the security that underlies the financing; the weaker the credit, the more one looks toward the value of the security as an intrinsic, critical, and essential part of the credit granting decision. With few exceptions, lenders and lessors insist upon not only obtaining valid and binding security, they must be assured of their ability to enforce it; so much so, in fact, that few borrowers, no matter how strong, could successfully raise funds without being able to give lenders good security. Speaking as a principal in the Canadian marketplace with over $40 million in commercial aircraft on our own books, I cannot stress strongly enough the critical nature of these facts.

During the course of a long-term financing, the borrower may be subjected to severe negative influences which could seriously impair the borrower's financial well being—even to the point of collapse. As late as a few years ago who would have anticipated the Penn Central bankruptcy, or a moribund Pan American, or a shaky British Leyland or Burmah Oil to mention but a few—all substantial companies with perceived promising futures. In view of potential or even theoretical problems, legal documents evidencing indebtedness are drawn up on the basis that, in the worst case, all parties' rights, obligations, recourses, and remedies are clearly defined. I underlined the fact that any obstacle placed between the credit grantor and his immediate access to his security in the event of default (as would be the case in respect of Bill S-5 in its present form),

is an extremely serious matter, and one which prejudices the position not only of the financial institution but also that of the borrower.

The Canadian airline industry extends beyond Air Canada to CP Air, to the designated regional carriers, to third level airlines, to the major charter airline, Wardair Canada Ltd., and onward to succeedingly smaller, more specialized, local, and generally financially weaker companies. In addition, one can neither neglect nor ignore the substantial number of private aircraft in Canada, for both corporate and personal use. The common thread respecting the above is that virtually all users of aircraft are dependent on significant amounts, if not 100 per cent, of external financing to fulfill their equipment requirements.

The decision to exercise a default procedure is not one taken without most serious and careful consideration, and, I might add, with particular reticence. For the creditor, economically, the process is exceptionally expensive. The full outstanding indebtedness may not be realizable out of the proceeds of the sale; a substantial investment in time and human resources must be allocated. In my personal experience—and I have financed in Canada a 747 and several 737s—defaults (other than failure to pay) have occurred, and we have worked with the airline to cure the default without resorting to seizure of the aircraft.

In actual practice, moreover, it is rare that the airline's financial condition would dramatically deteriorate in a matter of days, requiring hasty and precipitous action on the lender's part. Rather, the airline's problems tend to develop over a period of time, whether due to general economic circumstances or difficulties unique to the carrier itself. In both events, the weakening financial position would be observable by creditors and government alike. If all private remedies are exhausted and a determination made that the airline cannot remain viable, then two final alternatives exist—either government can intercede in the public interest to maintain the operation of the airline, or the financial institution should be entitled to exercise the default procedures agreed to between the financing institution and the airline set forth in the documentation. It is absolutely essential, in this latter instance, that the aircraft be seized immediately, that it be protected from possible damage, whether due to acts of third parties, improper maintenance, the elements, et cetera, and that its ultimate disposal be effected as quickly as possible. It goes without saying that it would be imprudent to permit the aircraft to continue serving the public during the completion of the default procedure owing to damage arising from possible corner-cutting on maintenance.

If Bill S-5 is passed in its present version, I can strongly state that our firm would in all probability cease financing aircraft for Canadian airlines due essentially to (1) confusion over priority of registration, provincial or federal jurisdiction, and so forth; (2) the problems and potentially long and expensive delays in crystallizing security; and (3) all the other fine legal and technical matters discussed at length in briefs already in your hands. I would expect other financial institutions, including chartered banks, trust companies, sales finance companies, et cetera, to undoubtedly adopt a similar posture.

As things exist today with respect to airline financing, the financial industry suffers only from (I) the inconvenience of multiple registry and title searching of security interests in aircraft; and (II) loss of protection abroad in countries signatory to the Geneva Convention of 1948. Inasmuch as the bill has been alleged to have been drafted in order to facilitate aircraft financing in Canada, it hardly seems sensible or appropriate to pass it in a version that would precipitate the absolute reverse effect.

We would be most pleased to cooperate with this committee to redraft the bill in a practical form suited to its original intent and spirit. We are confident that a suitably revised act would receive the endorsement of the financial industry and accomplish the desired objective.

I await your comments and questions.

Senator Prowse: Do you have a copy of the suggested redrafted bill?

Mr. Miller: We have not attempted to redraft the bill, that being somewhat presumptuous. We have, as well as other people, submitted proposed changes which we feel are necessary.

The Deputy Chairman: Before we commence the questioning, Mr. Guthrie, do you have something to add to what Mr. Miller has just said?

Senator Langlois: Mr. Chairman, before we do that, could you tell us if we have any representatives from MOT here this morning?

The Deputy Chairman: Yes, I did ask for a representative to be here. Mr. Shields will be here this morning.

Senator Langlois: But he is not here yet?

The Deputy Chairman: I called him this morning, and I see that he is here now. Good morning, Mr. Shields.

Senator Prowse: Perhaps he should come to the front of the room so we can see him.

Mr. A. Derek Guthrie, Legal Adviser, RoyMarine Leasing Limited: Perhaps I could add two additional remarks to those already made by Mr. Miller, both of which go to the meat of Bill S-5. I am glad that Mr. Shields is here this morning; perhaps he could throw more light on these two points.

My first point has to do with something that everybody is well aware of, namely, the conflict, possible or real, between the federal and provincial jurisdictions in this area. We are well aware of this difficulty, and I understand, Mr. Chairman, that you have communicated with the various attorneys general of the provinces. The remark I would like to make on this area is that the jurisprudence and the case law, of which I am sure most of the senators are well aware—for example, the *Johanneson* case—all deal with aerial navigation, and not with property rights in aircraft. Of course, the expression "property rights" is like waving a red flag before the provincial bulls.

I, as an attorney, express my doubts as to the constitutionality of parts of Bill S-5. I do not intend to waste the time of the meeting this morning going through all the legal concepts, but I do believe that there is a very serious problem here that requires a solution.

Two possible solutions that come to mind immediately are, first—and this is perhaps the obvious solution—that coincidentally with the coming into force of this law there should be provincial legislation in each of the provinces whereby the provinces in question would recognize the supremacy of the federal law in the area of registration of property rights.

Senator Asselin: They will not.

Mr. Guthrie: The second solution, if that is not satisfactory, would be, prior to the law coming into force, that it would be wise to contemplate a reference case to the Supreme Court of Canada. The reason I say, "before bringing the law into force" is a very simple one. Because of the difficulty of the constitutional aspect it may end up that financing institutions will not only have to worry about all the provincial registration offices, but will have a further registration office, namely, the federal one, plus the conflict between the two banks of registration offices. In other words, we will merely be multiplying existing problems. Hopefully a reference case could clear the air once and for all.

I am not speaking for all my confreres in the field. I am sure they have opinions of their own, and I know there is a division of opinion in this area, but the very fact that there is a divided opinion, I think, makes it essential that we try to remove this difficulty before bringing in this law.

The second point I have to make, and the final point, is one that I admit came to me only yesterday evening. Perhaps Mr. Shields may be able to assist me on it. The point I wish to make is that Bill S-5 contemplates the filing of notices of interest, which presumably are something less than the actual instruments or documents forming part of the financing packages. The Geneva Convention talks about the recording of rights, and nowhere does the Geneva Convention contemplate any summary or notice of such rights. I began to have a certain difficulty yesterday evening in contemplating the kind of notice that might be registered in the central registry if it was simply, for example: XYZ Company has a 10-year lease—end of notice. Whether that would comply with the Geneva Convention, which is what this exercise is all about, is a very moot question.

Finally, from the practical point of view, anybody who goes to the central registry not only wants to know the name or names of the people who may have rights in the aircraft, but he certainly wants to know what those rights are, and merely knowing that it is a lease or conditional sale is not going to satisfy him in his preparation of financing of an aircraft that may be valued at up to $35 million.

The Deputy Chairman: Thank you very much, Mr. Guthrie. Senator Asselin, would you like to lead off?

Senator Asselin: I have a very short question. Would you be in favour, before adopting the bill, of the government's sending it to the Supreme Court to obtain any advice on this matter that they may have to give us as to the constitutionality or the legality of the bill, at which time the provinces could be there to put their cases?

Mr. Guthrie: Yes, I would be in favour of that, assuming it was not possible to have the agreement of all the provinces in recognizing the supremacy of the federal law. The reason I would agree with that is, again, to try and clear the air of this existing difficulty that every lawyer in Canada recognizes, and most major financial institutions also recognize.

Senator Prowse: The problem would be that the provinces would have to name the federal government as their agent in the recording of their right. I am not sure, however, that they can waive a right. Would that be your understanding of it, too?

Mr. Guthrie: I would say that that would be one of the legal ways of clearing the air. I am hesitating, because I have not thought out whether there might be some other possibilities. That would certainly be one, senator.

Senator Langlois: Senator Prowse, you have in mind, if I understand you correctly, a method similar to the one adopted in connection with the marketing boards of Ontario.

Senator Prowse: That is right. The province names the federal government agency as their agency, and then there is no problem. In other words, they can be challenged in the courts on the grounds that they have abdicated their responsibility, and somebody can catch you off base there.

Senator Forsey: It is an administrative delegation. It is something that arises out of the *Winner* case.

Senator Prowse: Yes.

Senator Forsey: Interprovincial and international modes of transport. The same thing has been done in reverse.

Senator Prowse: There are a number of examples of that sort.

Senator Riley: I gather from some of the reactions of the provincial attorneys general or their representatives that there is a basis for negotiation, which they would prefer, perhaps, between the federal and the provincial governments on this particular point. As Senator Forsey said, it is just the reverse of what was the result of the *Winner* case, and we have a delegation of authority now under an act to give the provinces authority over interprovincial transportation.

I was just glancing at some of these things, and I think that the provinces would be prepared to negotiate with the federal government, and try to work something out, but as it stands now I am firmly convinced that if you send this before the Supreme Court you are liable to run afoul of the whole doctrine of *stare decisis*, which governs the *Winner* case, and I do not agree with that at all. This brief by the Canadian Bar Association is dated May 12, 1964. Well, that is old hat as far as I am concerned, and it seems to me, if this question was brought up by the Canadian Bar Association, and these representations were made as far back as 1964, that we should rush into this. The indication was that we should pass this bill back in November. Is that correct?

The Deputy Chairman: At the end of October.

Senator Riley: I think Senator Flynn—and I agree with him—said that we should refer this back to the attorneys general—

Senator Langlois: It has been done.

Senator Riley: —or to the provinces, and what happened was that there was an indication from the department, off the record, that this had been discussed with the provinces. If it was, it was not discussed with the proper authorities in the provincial governments, and the result of the inquiry that went out substantiates the fact that the provinces had not been properly consulted. We have their reaction now, and if we have to wait from 1964 to 1975 to introduce a bill like this, I certainly think we should take our time now and make very sure that we are not infringing upon the rights of the provinces under the BNA Act.

The Deputy Chairman: Are you through, Senator Riley?

Senator Riley: For the time being.

Senator Forsey: Senator Prowse really made my point, and I illegitimately interrupted and added a few points.

Senator Prowse: I am quite happy to have you interrupt me at any time. It keeps me out of trouble.

Mr. Guthrie: May I make a remark?

The Deputy Chairman: Please do.

Mr. Guthrie: I should like to emphasize that I agree with Senator Riley, the option being to try to have an arrangement or arrangements with the provinces. The other option of a Supreme Court reference was the secondary one. I think we are all aware—certainly, members of my profession are aware—that a good settlement is always better than a bad judgment.

Senator Riley: Some of them have already indicated that there should be negotiations.

Senator Langlois: It seems to me that the remarks which were made this morning should be addressed to the modification or the amendment of the Aeronautics Act rather than to the particular bill before us, which could also be introduced as an amendment to the Aeronautics Act.

The only thing I wondered about this morning was the suggestion of a reference to the Supreme Court. How can we refer a bill to the Supreme Court? Do we not have to wait until the bill has been enacted before referring it to the Supreme Court?

Senator Forsey: No, the bill can be referred.

Senator Langlois: I have my doubts about that.

The Chairman: Perhaps we should ask our legal adviser, Mr. Hopkins, what we can do in the circumstances.

Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel: I do not want to speak on matters of policy, which are for the Senate committee, but there have been past occasions when we have indicated that in the opinion of the Senate the government should refer a bill to the Supreme Court for advisory opinion. That is an option open to the committee.

The Deputy Chairman: But can we do that now before the bill is adopted by the Senate?

Mr. Hopkins: Yes, you can report to the Senate recommending that before the bill is passed it be referred to the Supreme Court.

Senator Langlois: Do you know of any precedent for doing that?

Mr. Hopkins: Yes, I do. It has been done. I am sorry I cannot give you a citation now, but I can find references later.

Senator Asselin: Would you then try to find the precedents for us, please?

Mr. Hopkins: Yes, I will.

The Deputy Chairman: I think we should hear the evidence now and discuss that other point later, because it will be up to the committee to decide what kind of action it is going to take.

Mr. Hopkins: It is a policy question.

The Deputy Chairman: Let us come back to Mr. Miller's brief. From what he has said, he is not satisfied with the bill as it is. I should like to ask Mr. Miller, or Mr. Guthrie, to expand further and tell us exactly what are the sections of the bill which they would like to see amended, and in what way they would like them amended. Can you give us an answer to that, gentlemen?

Senator Riley: He just wants more protection. That is all.

The Deputy Chairman: Yes, I realize that. But there are other sections involved. I have read most of the briefs sent to us and they have had in them many references to sections in which they would like to see some amendments made. For that reason I am asking Mr. Miller and Mr. Guthrie to tell us what sections they should like to see amended.

Mr. Miller: I hesitate to take much of your time by reading the points that have been set out in our original brief. My comments this morning were the result of a week's thought on why problems had occurred at all. If I may be allowed, I shall try to re-distill our concern into two areas, and then turn to Mr. Guthrie for consideration of some of the legalities.

A problem today is that, as the law exists, we suffer from inconvenience more than from any other thing. In Quebec, in order to seize an aircraft—and I emphasize in my presentation that that is not a common occurrence, nor is it one which is taken lightly, precipitously or without considerable thought and displeasure—we have the authority in the Province of Quebec to obtain a court order to seize, and if that is the case we can then proceed to seize the aircraft. In other provinces that is not even necessary. We can just go and grab our asset.

The problem in the bill, if there is one central problem, is the interposition of two and perhaps three courts into that process. For example, with respect to the 747 which we presently have, and have conditionally financed in Canada, a six-months delay is not an unlikely occurrence, and we estimate the cost of the interest, non-earning of interest, maintenance, insurance and protection is $12,000 a day. If you start to add that up on your calculators, over six months it comprises one hell of a lot of money. That only makes the problem worse, because upon final realization of proceeds from selling the asset, one's outstanding principal which has to be recovered is whatever it was at the date of seizure plus all these other accrued expenses, which includes, in addition, attorneys' fees, and you know they are never slight.

Senator Prowse: They are almost as bad as the interest.

Mr. Miller: Worse sometimes—win, lose or draw. The other side of that, in the sense of the way the brief is prepared, is that it gives a tremendous amount of discretion to the judges involved in that process to establish the conditions of the sale, and to determine whether a sale which is validly held fulfills their own beliefs that it was in fact a fair sale.

Let me give you an example. If the court procedures were observed, and a public auction held and a bid made by a small foreign airline—an African airline or an airline from the Far East—and it was subject to financing being obtained, and, after six months of trying, the financing could not be obtained and that transaction fell through, it would simply add to the problems which the creditor, whether he was a lessor, a lender or a vendee, would

already have had as an addition to the expenses. It makes it more problematic. The result of all that is a reluctance on the part of the financial community to finance airplanes. This is a two-edged sword. It impacts the provider of the funds, but indirectly, it certainly will impact the seeker of funds, if people will not lend him money because they do not have security or access to it.

In the strict legal sense, perhaps Derek Guthrie can discuss some of the points which we have spent considerable time in formulating on a point-by-point basis.

Mr. Guthrie: Mr. Chairman, although I am prepared to carry this out, if you wish, I do not feel that it would be worth while repeating the individual points which have been made in the brief. However, perhaps I could add one or two additional problem areas which we recognize and which I think are serious enough. I will pick two just as examples.

Bill S-5 contemplates registering of rights in aircraft, including parts of the aircraft, but does not contemplate the ability to register rights simply in parts themselves. For example, the obvious case would be an engine or engines. As you senators will know, the value these days of engines of the wide-bodied aircraft can be $1 million or more—in other words they are assets which are, many times, financed by an institution different from that which finances the airframe. Mr. Kennerly may address himself to that point a little further on this morning.

It would seem to RoyMarine that if we are going to go to the trouble in Canada today of adhering to the Geneva Convention, which was passed more than 25 years ago, we should do our best to make sure that the Canadian legislation is up to date, and that it recognizes a situation or situations which did not exist 25 years ago, in that the present value of engines, and even the ability to exchange engines or to pool engines, really had not been contemplated when the Geneva Convention came into effect.

One of the areas in which we feel Bill S-5 can be improved upon is to permit registration of rights against parts of aircraft, and certainly against engines.

The second point, as an example again, comes back to the difficulties placed in the way of a financing institution which has to be forced to realize upon its security. Bill S-5 has set up a fairly detailed procedure to be followed by which you would have to obtain three different judgments from two different courts before you could dispose of the aircraft.

Mr. Miller has already pointed out the tremendous cost of simply keeping one of the wide-bodied aircraft on the ground or out of circulation for a single day, let alone the minimum, the absolute minimum, of six weeks contemplated in the bill. I emphasize "minimum". The cost is really prohibitive. Mr. Miller emphasized that these default procedures are not taken at the blink of an eye, but are taken as an absolute last resort.

Personally, I am not aware of any seizure of any commercially scheduled aircraft in Canada. I do not profess to be an expert in that particular area, but I believe we have not had that problem in Canada. I am now talking about one of the major airlines. Obviously any default would be carefully considered long before to use the expression, "the plug was pulled."

Just as an example of what could happen, there is in Bill S-5 a prohibition against seizing an aircraft on a regularly scheduled commercial flight.

Senator Asselin: What clause is that?

The Deputy Chairman: Clause 5(4). It applies to component parts.

Mr. Guthrie: It is clause 9(4), which reads as follows:

> An order made pursuant to subsection (2) shall not authorize the seizure of an aircraft at any time before the completion of any scheduled flight that has been commenced at the time the order is made.

That raises a very interesting practical question. For example, let us take a Canadian aircraft as opposed to a foreign aircraft. If it was necessary, and a decision had been made to exercise default, this would mean a writ of seizure, and whether it emanated from a federal court or a provincial court it would not matter. It could not be served upon the aircraft; therefore, the aircraft could not be secured until such time as it had completed its flight.

Obviously, if it is a scheduled flight from Montreal to Toronto, Vancouver and on to Hawaii, this would create a rather ridiculous situation in which the bailiff would stand there and watch the aircraft take off for Hawaii. I am not trying to be facetious, but that is one of the possibilities that could occur.

Perhaps even more embarrassing, from a Canadian point of view, would be the case of an institution financing a foreign registered aircraft—an international aircraft upon which a default had been called by the foreign company—realizing that that particular foreign aircraft was scheduled to land in Toronto at such and such a time on such a day. Legal counsel for that foreign company communicates immediately with legal counsel in Toronto and informs him of when that aircraft XYZ is going to land, and asks, "Could you arrange for a seizure?" The court called upon to determine whether or not the seizure can be granted is going to have to determine somehow whether that commercial scheduled flight has finished or not. This will have to be dealt with within a matter of hours, not days or weeks. I find it difficult to understand how the judge called upon to make this decision is going to find out in sufficient time whether this internationally scheduled aircraft is, or is not, terminating its flight in Toronto. It raises a situation, I suggest, that is almost impossible to deal with practically.

There are many other problems, but I believe most of them have been dealt with in the brief. If there are any questions, I shall be glad to answer them.

Mr. Miller: What we tried to look into is the element of practicality. Under what circumstances are we likely to have to seize an aircraft? This is one of the pragmatic points to be resolved. That is why we would hope that several people might be called upon to work with this committee in order to redraft the bill on the assumption that the constitutional issue would have to be resolved. That is separate from the practical drafting of the bill in a way that will ensure it's being accepted by the industries. It is intended to assist as opposed to simply taking a shot at it and finding out that we have to come back here all the time and comment on the bill. The unanimity of opinion would be far more helpful than simply taking an actual piece at a time.

Senator Riley: Are there any problems with respect to these larger aircraft such, as the 707 and so forth? Have there been instances where it is considered necessary for the conditional lender to seize one of these aircraft?

Mr. Miller: Not that I am aware of.

Senator Asselin: Or a DC-3?

Mr. Miller: There have been some interesting South American airline failures that have resulted in the rather unique action of repossessing aircraft, but there have been no problems with major airlines. There have been some bankruptcies among certain European charter airlines, but to the best of my knowledge these problems were resolved with reasonable expediency. I know that one of the German charter carriers could not stay in business and the creditors managed to repossess and sell the aircraft without too much difficulty. I believe it was a DC-8, but the key is to be able to do that.

Senator Riley: That is the case of the pilot coming back with the aircraft?

Mr. Miller: You mean the Vesco situation?

Senator Riley: Yes.

Mr. Miller: That was similar, but it was not a commercial flight. I understand in Peru there was a small government-oriented airline that could not make payments, and after a while and not recognizing the creditors' rights, they took their own action. Peru is a signatory to that convention. I understand the action taken would not normally have been considered in line with the usual legal procedures. In effect, they stole it back.

Senator Riley: That is typical of finance companies repossessing cars—just going down and finding the key in the car and taking it?

Mr. Miller: It is a rather more difficult problem than that. It is not that small an asset.

Mr. Guthrie: I think if we gave Mr. Miller a key to the aircraft he would still have a problem.

Senator Asselin: You said that the bill should be redrafted. Do you have any redraft yourself to communicate to the chairman of the committee?

Mr. Miller: We felt that this would be a bit presumptuous of us—at least until we had the approbation of your committee.

Senator Prowse: We have to have the solution to the constitutional problem before we do anything.

The Deputy Chairman: To answer Senator Asselin's question, in their brief RoyMarine do touch on many of the sections they did not talk about this this morning. If you look at their brief you will see that RoyMarine has made some recommendations and proposed some amendments, although I would say not in a legal form.

Senator Prowse: They set out the problems.

The Deputy Chairman: Yes, they are setting out the problems. That is the reason why we called Mr. Shields this morning. I do not know whether he has had occasion to read the brief that has been presented.

Mr. L. Shields, Solicitor, Legal Branch, Ministry of Transport: No, I received it just now.

The Deputy Chairman: That is too bad. In any event, we will have occasion to discuss the representations made by the three organizations that are here this morning. Are there any other questions?

Senator Langlois: Going back to this registration of security on component parts, I should like to have some explanation of how this could work in practice.

Take the case of A selling an aircraft to B, and taking security on the whole ship, and then that ship running into trouble with its motors—it has to have a motor replaced. If security is given on a motor, what is left for the prime mortgagor? A carcass with no soul? How would that work in practice? I should like you to explain that to us?

Mr. Miller: Over the course of an aircraft's useful life, the only thing of its origin that will be remaining will be the shell, due to the very rigorous overall procedures. An engine is overhauled every several thousand hours as a matter of routine, and consequently what it was in the beginning and what is in the end are very individual items.

Now, when a jet engine is recorded, say, from the point of view of a mortgage, the serial number, or the plaque of the owner, is affixed to part of the spar, which is actually attached to the wing, and that is about the only thing that will not change over the life of the engine. So from that point of view the parts will be moving in and out just like you change the oil filter and spark plug on an automobile.

Senator Riley: The serial number could be changed.

Mr. Miller: If it were changed, in all probability it would have been done—I hate to use the word—fraudulently. It is unlikely that it would be agreed to. That would be unusual.

The problem of spares in a legal sense is a very difficult one. Engines are a very large discrett system, as are flap systems, landing gear train, certain instrument systems, and the inertial navigation system. These are all very easily identifiable parts and normally, as a matter of routine, their value is hundreds of thousands of dollars and up, depending on the aircraft.

Senator Riley: What about the radio equipment?

Mr. Miller: Yes, all of those things. The cockpit is a multimillion dollar expense. Take the Air Transport STOL planes, as example. You have probably been following their progress in the press. The original cost is relatively low, but the final cost of those airplanes, in order to conform to Canadian regulations in respect of commercial airplanes, is high. Avionics add $750,000 to their cost. They are very expensive. These sorts of things are very carefully identified. I admit that there are spare tires and other things that are called consumables—things that to do wear out and not essentially replaced or refurbished, but there are all sorts of other parts. So long as they remain for the exclusive use of the airline which originally acquired them, they are carefully inventoried because they are very expensive. You have to keep track of the serial numbers. If there is a failure, you want to know why.

Senator Langlois: A similar situation obtains in the shipping industry. You can compare the financing and acquisition of ships to the acquisition of aircraft. We do not have separate mortgages and securities taken on the motors or the electronic equipment of a ship. It would be comparable to to a degree with the electronic equipment and engines of an aircraft. Of course, we have had an advantage under the Canada Shipping Act in that the property of a ship is divided into 64 shares, and you can mortgage one share, 10 shares or the whole 64 shares.

Mr. Miller: There are a lot of valuable parallels.

Senator Langlois: Would you not suggest that this should be adopted in the case of aircraft?

Mr. Miller: I don't know whether we have a necessity for 64 shares, but that is the point of a central registry.

Senator Langlois: There is a central registry here in Ottawa for ships.

Mr. Miller: But in respect of ships, particularly today's ships—large tankers and bulk carriers—the engines are rarely removed from the vessel.

Senator Prowse: Whereas in aircraft they are?

Mr. Miller: Yes. You have very few items in a ship which mechanically require constant change. A rudder may break or be damaged, and it is repaired. It is mostly solid steel. A propeller may break. You throw it out or grind it down, and it becomes a propellor on a smaller ship. You do not have the constant change by law. That is one of the big problems in shipping today, that under flags of convenience there is no regulation of maintenance on ships; but in aircraft there are regulations.

Senator Langlois: But, Mr. Miller, you must be financing the acquisition of aircraft?

Mr. Miller: Yes, we do.

Senator Langlois: How do you protect your financing? Do you take security on the shell alone and leave the motors to the first one who will lend money—to the next man who comes after you?

Mr. Miller: That is a very interesting point. Today, for example, we have several aircraft that we financed ourselves. The airframe and engines constitute one package, and the spare engines constitute a separate package. We have separately protected out interest by registering in accordance with provincial law. In the case of one airline a regional airline that happens to travel in several provinces—we were forced to register in every province in which it was conceivable that the airplane might physically be.

Senator Prowse: And every subdivision that had an air field, presumably.

Mr. Miller: That is a possibility. In certain provinces there is only one registration, and it is not difficult; but in other provinces, conceptually that is possible.

For example, let us take Air Canada. Air Canada, in financing its lockheed 1011s, does have a problem, because the engines, which are English, are financed in a package by English sources separately from the airframes, which are manufactured in the United Stetes. There you have a very definite case of engines and airframes being separately financed. That is a thorny problem and one which they particularly will have to resolve. There is a further problem in that they are leasing some of their later aircraft, the engines of which happen to be leased from the U.K. So you have a definite division of ownership, which can be a very thorny problem.

Senator Langlois: I am surprised that your brief is silent on this important question, which has been raised by other interested parties in this legislation. It concerns the priority of securities, dating from when the securities are registered with the central registry. Do you have any comments to make on that?

Mr. Miller: By priority, do yo mean who registers first?

Senator Langlois: Yes.

Mr. Miller: We have alluded to that in the brief as being a problem, because it is conceivable that a junior creditor could physically register his interest ahead of the senior creditor.

Senator Prowse: Or in a province at the present time.

Mr. Miller: Yes, that is a secondary area of conflict.

Senator Langlois: But that is a fact to your knowledge when you finance the aircraft?

Mr. Miller: Not necessarily. The lessee or the vendee could register first. Under the Aeronautics Act, for example, the certificate has to be issued to the operator of the airplane and not necessarily to the owner or the vendor.

Senator Langlois: But you can always inquire from the central registry. We have the same thing with marine mortgages. They take priority from the date of the registration with the registrar of shipping. Then it is transferred to the central registry here in Ottawa. Anyone lending money on that ship can call the registrar of shipping, in Quebec or Montreal, or the central registry, and he will be informed right there if there are any prior mortgages registered on it. I do not see your point in objecting to this.

Senator Prowse: But a ship can only go to Quebec and British Columbia.

Senator Riley: Not to Alberta.

Senator Langlois: They have the prairie schooners there.

Senator Forsey: It was the celebrated "potato" Jones who said he could not see why any British ship could not sail anywhere from Singapore to Saskatchewan. That was during the Spanish Civil War.

Mr. Guthrie: In reply to the remarks on priority, I come back to a remark I made earlier with respect to the provincial-federal problem, et cetera. I emphasize the words "priority of rights", in this whole area of ranking, or priority of rights, and, as an adjunct to that, the delay within which rights should be registered. Let us talk for a moment provincially or federally, and leave Bill S-5. This is a very complicated and sensitive area.

For example, in the province of Quebec, as you gentlemen are well aware, we do not have a basic system of registration of rights for movable property other than the limited commercial pledge and trust deed, but it will take months to find the trust deed in the way it is registered. So we do not have in Quebec a system of registration. We have priorities established by the Civil Code without registration, which raises in itself some very nice legal problems as to how the Quebec Civil Code would require to be either amended or changed to allow Quebec to participate in any kind of a scheme under Bill S-5.

With respect to your point about the delay in registration, sir, most of the provinces, in their systems for registration of movables, chattels, provide a delay within which registration of an instrument can be made, and providing you register your instrument within that delay you retain the priority that you had in accordance with the date of execution of your document.

I do not feel that the delay is that crucial. It may mean that if you do not have a delay within which to register your document, you simply have to run as quickly as you can to the nearest registry office to make sure you get there before some other person who may have acquired rights immediately after you and unknown to you.

So, for purposes of registering, although not crucial, it would seem perhaps practical to contemplate a short delay of possibly up to 30 days to permit a financing institution to register its documentation—just as we have for chattel mortgages and other movable security.

Senator Langlois: Mr. Chairman, In this respect, may I be allowed to read the witnesses the suggestion advanced by the Minister of Justice of Quebec in a letter addressed to you under the date of January 25 in connection with this bill? The suggestion reads as follows:

> Thus, it might be desirable that the Federal Act provide for a mechanism that would recognize the validity of registrations made in each province, or which the Federal Department of Transport would have received a copy.
>
> Such exchange of documents should obviously be changed to the central registry. It goes without saying that the proposed mechanism requires prior consultation with the various registrars of the provinces.

What do you think of that suggestion, sir?

Mr. Guthrie: If I understand the paragraph that you have read, that would be a sort of one-way street. In other words, registration of rights in aircraft would take place in the various provinces but immediately, hopefully, by some means of central communication, the information would be fed to the central registry in Ottawa. That, I think, is an improvement, or would be an improvement, but it would still mean that the financing institutions would be obliged to register, if I understand the remarks correctly, in all the various provincial or county jurisdictions, which is one of the major practical difficulties today when we are talking of an aircraft that is going to be landing in airports all across Canada. It would, therefore, be of some assistance, because to do a title search of the aircraft, if the communications system was good, presumably you could go directly to Ottawa, check all the documents that had been registered in the various provinces, and know what the title situation was. But you would still then be obliged to register in all of the country and provincial jurisdiction. It would be an improvement, although it would not be the ideal situation.

Senator Langlois: But from what you have said this morning, I assume that you are not against the concept of a central registry.

Mr. Guthrie: Not at all.

The deputy Chairman: On the contrary.

Senator Prowse: That would work.

Senator Langlois: That would work, yes.

Mr. Miller: There is a certain amount of confusion as to how the bill would affect transactions already completed—that is, whether people such as ourselves would be obliged to register what we have in the central registry, and whether the procedures that would be necessary in the event of crystallization of security would fall under the new bill, or those provincial acts that were in force when the transaction was consummated.

Senator Prowse: Let us get a new, workable act first, before we have all these troubles.

Mr. Miller: Well, that is our hope.

Senator Asselin: We have enough troubles already.

Senator Denis: Let us suppose you are the owner of an aircraft until you are paid back. What about the kind of protection you would have? You would be the owner of the aircraft until the loan is paid to you.

Mr. Miller: That is the problem. If I were lessor—and a number of aircraft in Canada are leased—I presume that to seize that aircraft, even though it in fact belongs to me, I would still have to go through the procedures of the bill. It is this court problem.

For example, as I understand it—and Mr. Coolican, counsel for the Canadian Bankers' Association, is more aware of this, as is Mr. Kennerly—in the Canada Railway Act that is not a problem. The fact that the rolling stock is leased, and is therefore owned by a non-railway, in no way impedes that creditor, in the event that he has to realize on his security, from taking back his equipment—and I emphasize, "his equipment", because that is what it is.

Senator Prowse: That could be a practical problem too.

Mr. Miller: Yes. Of course, one problem we have not discussed is how do you find your aircraft?

Senator Denis: But you do have the protection of the saisie de revendication.

Mr. Guthrie: May I reply to the honourable senator's remark, Mr. Chairman? It is interesting to note, senator, that should Bill S-5 become law in its present form, the saisie avant jugement, recognized in the Quebec Civil Code or Procedure, would be wiped out. You would no longer have the right to go and seize an asset that belonged to you, even as owner or as pledgee. You would have to obtain a judgment from the court permitting you to make the seizure, which again, from a practical point of view, raises the most extraordinary problems, because by the time you got around to getting your judgment, the chances of your actually being able to seize the asset are probably less then five per cent. So not only would the Civil Code be affected, but even our procedure—the Quebec procedure—would have several articles wiped out with respect to aircraft.

Senator Denis: Yes, but you would be protected. The aircraft would be seized and nobody could use it. It would be in the hands of the sheriff.

Senator Asselin: In order to have the aircraft seized, you would have to obtain a judgment.

M. Guthrie: Saisie-revendication, saisie avant jugement.

Mr. Miller: The second problem is that you not only have to seize it, but you have to dispose of it.

[*Translation*]

Senator Denis: How can you become the owner before the judgment?

Mr. Guthrie: If we are already owners, we have the right to have a garnishee order issued before the judgment.

Senator Denis: That is right.

Mr. Guthrie: And to institute an action against the owner of the aircraft in order to obtain possession of it and of the assets, during the action. But, the important matter is the possession of the aircraft during the action, to avoid damage or a flight not recognized by the authorities etc. Garnishee proceedings are recognized in Quebec and their purpose is of great interest to creditors, that is to protect the assets involved.

[*English*]

Senator Langlois: Your only solution would be to revert to my prior suggestion, that you should try and convince your legislature to adopt the same principles that are in existence in the Canada Shipping Act. As you know, under the Canada Shipping Act, the mortgagor has the right to sell the ship without any recourse to law. He can give a bill of sale at any time provided his debtor is in default of payment. This is section 50 of the Canada Shipping Act.

Mr. Guthrie: You are right. There are many areas in the Canada Shipping Act that I think could be borrowed, if we are looking at the whole concept, to revitalize the concept of a central registry. I believe there are areas of that act that would be of assistance to the honourable members here.

Senator Langlois: The Aeronautics Act has borrowed many things from the Merchant Shipping Act, including the definition of an aircraft, which is almost word for word the definition of a ship in the Canada Shipping Act.

But you have not commentated on my prior suggestion that this bill, S-5, should have been introduced as an amendment to the Aeronautics Act, instead of doing it by a separate piece of legislation as is being done now. Would you agree with this?

Mr. Guthrie: My immediate reaction would be, first, that the setting up of a central registry for the recording of rights in aircraft is perhaps outside the practical sphere of the Aeronautics Act, which deals basically with aerial navigation, et cetera. There is nothing that would prohibit the introduction of the equivalent of Bill S-5 into the Aeronautics Act, but as I say, my reaction would be that you are getting into an area of property rights in aircraft which I do not think is really the main purpose of the Aeronautics Act, although I grant you, some of the regulations under the Aeronautics Act do talk about registration of the owner, et cetera, and they even define an owner. But it seems that the purpose of the regulations under the Aeronautics Act—the relevant regulations—was merely to permit Ottawa to control the flights of aircraft and to have identification numbers for aircraft rather than to deal with rights in the aircraft.

Senator Langlois: Section 6 of the Aeronautics Act empowers the minister to make regulations with regard to the conditions under which aircraft are registered in Canada.

Mr. Guthrie: Again, senator, I am emphasizing that I do not see any legal reason why the kind of articles we are talking of today could not be introduced as an amendment or an adjunct to the Aeronautics Act. I have just not thought through the philosophy. What advantage, for example, would there be to proceeding in that manner rather than having a bill dealing strictly with property rights in aircraft? Would there be an advantage in doing it? I cannot think of one offhand.

Senator Prowse: For people concerned not with the navigation but purely with the financing of aircraft, could we have a separate bill covering the financing and then refer it, if necessary? It would mean that you could get to know one act instead of having to know an act which has a whole lot of stuff in it which is not relevant to your problem. In other words, this would be more satisfactory from the point of view of an operator, in the sense of a lender, and his solicitors. It would be easier for them to operate with a second act than with a part of another, more complex and complicated, act.

Mr. Miller: Most financing agreements stipulate, in respect of commercial aircraft at least, that the operator of the aircraft operate that plane in accordance with the regulations under the various aeronautics acts.

Senator Prowse: So it is comme ci comme ça.

The Deputy Chairman: On the point Senator Langlois raised, owing to the fact that we have to comply with the Geneva Convention, do we not have to pass special legislation?

Senator Langlois: No. We have done that in the Canada Shipping Act with respect to pollution. We have done it with respect to load line certificates, and so on. They were annexed. The conventions were ratified by adding a part dealing with the particular point as an annex to the Canada Shipping Act.

Mr. Guthrie: May I respond to the general question just asked, Mr. Chairman? If Canada chooses merely to pass the minimal legislation necessary to comply with the Geneva Convention, it can probably be done in a matter of a few paragraphs, because the requirements of the Convention are rather basic and leave a considerable amount of leeway to the national states in question. However, I feel that Canada should be doing more than merely complying with the bare minimum of the Geneva Convention, because of the fact that we are 20 some odd years down the pike from where we were when that convention was passed. I think it would reflect to Canada's advantage and to its credit if Canada attempted to bring forward legislation which not only complied with the Geneva Convention but went as far as possible towards recognizing the factual situation both with respect to commercial aircraft, and with respect to the financing of commercial aircraft.

I feel that many of the ideas presented in the draft of Bill S-5 are excellent. Some of them do go beyond the requirements of the Geneva Convention. That is not to say they are not good. Quite to the contrary; they are good. I think we should be exploring and, perhaps, perfecting some of the additional areas rather than just falling back on a minimal amendment to the Aeronautics Act. That is my own personal feeling.

Senator McElman: Mr. Chairman, I was impressed by the offer of Mr. Miller, on behalf of his industry, to assist in drafting proposed amendments to this bill. That offer raises a question in my mind. Can he tell us whether his industry, the financing aspect of aircraft, was consulted at any point prior to the presentation of this legislation?

Mr. Miller: I can only speak for my own firm. When the bill was originally presented in 1973 as Bill S-9, we caught it in the other place. We presented our comments, which

were not unlike the ones contained in our present brief. Because Parliament was prorogued, we were told that if, as and when a bill—this bill or similar bill—were presented we would in fact be consulted in advance of its being presented to the Senate. Unfortunately, that did not occur. In fact, we spent a considerable amount of time and effort in attempting to see that certain amendments would be made along the lines we are once again discussing. We consulted with people such as De Havilland Aircraft and the Boeing company, and everyone agrees in principle with the concept of the bill. But, to a man, everybody is concerned with the execution of the bill and certain elements in the bill.

Senator McElman: Then so far as you know there has been no direct consultation as to the views of your industry which is very much involved in this. There was no preconsultation before the presentation of the bill.

Mr. Miller: Essentially, no. If there were, they do not seem to have found their way into the bill.

Senator McElman: I find this incredible, Mr. Chairman. Perhaps it is something we should pursue with witnesses representingMOT.

Senator Riley: In respect of the financing of aircraft, am I correct that they are usually purchased by corporations? In other words, even a private individual buying an aircraft of any considerable size usually does it through a separate corporation in the same manner would Air Canada or any of the other airlines would. We have in at least some provinces the Corporation Securities Registry Act, and, as I recall, the securities which are registered take into account any replacements of parts by new parts which are incorporated into an aircraft, or into any other such commodity. If that were done, would that not give adequate protection to the financing organizations?

Mr. Miller: Do you mean such as spares, once they are affixed to the aircraft?

Senator Riley: That is right—things like new radios, new engines and that sort of thing.

Mr. Miller: That is what we consider under the doctrine of accession. Up until recently, for example, the general principle under which most lessors and lenders operated was the doctrine of accession. In other words, "This is our equipment. Anything attached to it becomes part of our security." However, there was a recent case, *Firestone v. IAC.*

Senator Riley: I am not familiar with that.

Mr. Miller: That case went to the Supreme Court. I can briefly suggest what its attributes were. I understand that IAC conditionally sold a truck to an individual. The tires on the truck were from the Firestone Company on a lease to the individual. When it was necessary to repossess the truck, IAC repossessed the entire truck including the leased tires and said that, inasmuch as the doctrine of accession was clearly set out, anything attaching to the security became their property. Firestone said, "No, these are very discreet and identifiable parts and we think they should be removed." As I understand it, the courts upheld Firestone. So there is a certain amount of concern expressed in instances where you have discreet and recognizable parts that become attached to someone else's security. Again, this is particularly true where you may have engines financed quite separately from the airframe. What used to be the case was that if I had an aircraft with four engines, my security comprised the aircraft with four engines, and any engine which from time to time might be on that airplane I assumed was my security. My engine which may have been in use by another airline in another country, owing to the pooling arrangements that airlines generally have among themselves, I would also assume to be my security.

Senator Prowse: But you do not get the airplane that is attached to it.

Senator Riley: Would it be the responsibility of the conditional seller, or whatever you might call him? Would it not be his responsibility to search the registry for these corporations' securities and determine whether or not the securities took precedence over the conditional seller of the tires, for example? Was the *Firestone* case predicated upon the avoidance of the provisions of a registered corporation's securities?

Mr. Guthrie: Senator, Mr. Miller obviously reads the Supreme Court jurisprudence assiduously. Much more so than I. However, I would suggest that the problem is one of identification of the parts. As long as the individual parts can be identified and you can prove that that is the part that you in fact financed, that is one thing. For example, you may have a serial number or a plaque, something about which there could be no dispute, about which you can say, "That is the one that I financed." That is the crux of the whole problem and it has been recognized as such. As you know, in United States legislation there is provision for registering property rights in engines, propellers, et cetera. The limited amount of American case law that I am aware of shows an example where a charge was placed upon an airplane and all accessory parts. There was a dispute as to who had title to the engines, and the party that had taken security of the aircraft and all its accessory parts was found only to have security in the airplane; not in the engines. Somebody else had title to the engines because it was too general a definition. It was not possible to determine whether the engine that was on the aircraft at the time they repossessed it was the same engine that was originally on the aircraft. The problem came down to being able to specify and identify.

Senator Langlois: When I asked you for your comments on the suggestions made by the Department of Justice of Quebec in regard to the registration in Ottawa, and the securities registered in the provinces, you made the comment that this will create a difficult situation for the financing community due to the fact that they would have to register the securities in all the provinces of Canada in order for them to be fully covered. Am I right in assuming that the only solution to the problem is the vesting of the authority in the federal government?

Mr. Guthrie: I think, senator, this has a full circle to it. The answer is, if we can convince the provinces, yes, without hesitation.

The Deputy Chairman: That will simplify the problem.

Senator Langlois: I do not share your opinion. I think they already have the necessary authority under the general power of the federal government to register with the Government of Canada. This principle was sanctioned by the Privy Council, the Supreme Court of Canada, and I have been told by some of my friends that this decision dates back to 1952.

Mr. Guthrie: It does not matter at all—

Senator Langlois: It does not matter if it dates back to 1867. The older the better.

Mr. Guthrie: You are quite right, senator.

Senator Riley: How could you encompass pieces of an airplane, a radio, or an engine, under the provisions of the Constitution dealing with peace, order, and good government?

Senator Prowse: In any event, what you could have right now is the situation where you have rights in the Federal Court, and the provinces would recognize the rights, you would appear to have under provincial jurisdiction and the provincial courts. Then we really have fun; we get the reference you are asking for.

The Deputy Chairman: I would like to remind the committee, that it is already five minutes to 11, and we have another organization to hear from. I think your question should be asked of the other organization? At that time, if you feel you can add something, you can do so. We will give an opportunity to the other organizations.

Senator Asselin: Mr. Chairman, we have been all very impressed with the presentation this morning, and I wish to express at this time—I am sure I am speaking on behalf of all my colleagues—my appreciation. I wonder whether these witnesses could remain available during the sitting so that we can have the benefit of their further comments.

Mr. Miller: It will be our privilege.

The Deputy Chairman: Thank you very much, Mr, Miller and Mr. Guthrie.

I now call upon the Canadian Bankers' Association.

On my right is Mr. Bellevue, Assistant General Manager (Corporate Lending) of the Royal Bank of Canada, and to his right is Mr. Coolican, who is the legal adviser. Mr. Bellevue, do you have a statement to make?

Mr. G. A. Bellevue, Canadian Bankers' Association: Thank you, senator. Mr. Coolican has prepared a very brief summary of our position following the submission of our brief to you earlier. After listening to Mr. Miller and his associate this morning, I am afraid that you are not going to find very much new in it. However, with your permission, I should like to ask Mr. Coolican to read it.

Mr. Colin C. Coolican, Canadian Bankers' Association: Mr. Chairman and honourable senators, first of all, on behalf of the Canadian Bankers' Association I would again, like to thank you for the opportunity of submitting our brief on Bill S-5, and attending before your committee and discussing or commenting on the bill. We will answer any questions which you have on the brief or on the general role of the banks in financing aircraft in the aircraft industry.

As we have indicated in the brief, the association and the banks welcome the idea of providing for the establishment of a central registry for aircraft. We recognize the need to regulate in certain respects the circumstances under which an aircraft may be seized.

At a time when the value of aircraft and associated equipment has become so high, and the methods of financing have become so complex, we support legislation which we feel was originally intended to provide for a more reliable security in aircraft than what was available in the past. We hope it will provide for more flexibility in approaching future methods of financing.

In the brief, as well as the addendum that is attached to the brief, we have tried to set out those areas of the bill, and some of the specific provisions, which we feel might be amended to meet more fully the intended purpose of the legislation, and avoid, where possible, unnecessary interference.

We have set out, on page 3 of the brief, our basic areas of concern. I thought it might be useful if I ran through them quickly. You will quickly see the areas of concern to our organization are in many respects the same as the areas of concern of others, although some of our emphasis and some of our concerns are a little bit different.

I think the first problem we have is that it is not clear whether the bill was intended to cover registration of a complete aircraft, or whether it would extend to the separate registration of parts and components. In particular, I refer to the engines on the larger commercial aircraft. Nor is it clear whether the bill was intended to relate only to specific charges against aircraft, or whether it would also apply to the traditional floating charge which may well cover aircraft, parts and components.

I think you have seen, from the other briefs presented to you, that the value of commercial aircraft and the value of separate parts and components make it very desirable to be able to separate them for the purposes of financing and for the purposes of collateral security, whether that security is specific or by way of a general floating charge.

I think the second point that we should like to make is that we feel the bill should clearly establish under clause 7, which deals with priorities, that parties, by agreement amongst themselves, can effect their priority.

Senator Prowse: And third parties?

Mr. Coolican: I think by agreement amongst themselves they should only be entitled to effect their own relationship vis-à-vis third parties. We look to the legislation, and to the priorities registration.

Thirdly, we feel provisions regulating the seizure of aircraft are too cumbersome. We recognize the need to protect the farepaying passengers. Nevertheless, it must be remembered that an important aspect of seizure, as a remedy in those very few situations where you might consider or use it, is the speed with which it could be effected once the decision is made by a lender to exercise that right.

Fourthly, although we acknowledge the need to regulate in some respects the seizure of a commercial aircraft, we do not feel there is any need to regulate the forced sale of an aircraft. In particular, we do not feel that the bill should provide, as it does in section 10, that the court has a right to establish terms and conditions under which an expensive aircraft can be sold for purposes of realizing on it as security. Such sale is unlikely to arise before seizure, and subject to the seizure's being regulated by a court to protect the passengers, we feel that the right should be as agreed upon between the borrower and the lender.

Fifthly, we feel that the transitional provisions may not preserve the security and priorities of some of the existing security holders. We feel that it is very important that they should.

Finally, we would suggest the inclusion of a provision which limits the liability in tort of the holder of a collater-

al security. We have provided in our brief the type of provision we were thinking of, which is not an unusual provision and appears in other legislation similar to this.

You can appreciate that this simply outlines our basic concern or concerns. Our more detailed comments are included in the brief. If it is the decision of the committee that the bill should be revised or amended in some respects, we would hope that you would include at least some of these suggestions. If honourable senators have any questions, our purpose in being here today is to respond to those questions or comments.

The Deputy Chairman: Your suggestions are explained in the addendum.

Mr. Coolican: They are in both the brief itself and the addendum. The addendum tends to address itself perhaps to the more legal points, and in fact there are some suggested drafting amendments in the addendum. But I think our basic concerns are the ones I have outlined here, and perhaps are not entirely legal. Those are the ones that are discussed a little more fully in the brief.

The Deputy Chairman: Thank you. Are there any questions?

Senator Asselin: You appear to have the same problems as the witnesses who were before us earlier this morning.

Mr. Coolican: I think they are basically the same. Perhaps they have some different problems. The floating charge is one that concerns us more, in the sense that a bank may be more inclined in some loan situations to take a charge by way of a floating charge, as opposed to a specific charge on an aircraft or a particular part of an aircraft: although there are some situations, as I understand it, where a bank would certainly be interested in the security of a full aircraft or a pool of engines.

Senator Langlois: Can you tell us under what circumstances such a floating charge could be created?

Mr. Coolican: For example, in a loan to an airline, by way of an operating or term loan, which is secured by a general charge on the assets. That would be a typical situation. The problem we have is that it is not clear in this legislation whether you intend that we register that charge against the various aircraft that may be covered by that charge. We would like that clarified. If you are going to develop a central registry—and we endorse that concept—there should be some provision for the floating charge.

Senator Prowse: It would be a little more satisfactory, would it not, if the floating charge had to be registered against all things that it covered?

Mr. Coolican: Reference was made to the Corporations securities registration act. I am familiar only with the Ontario legislation. If a bank were going to take security by way of a floating charge, we would still register it under those statutes. To the extent we knew there were going to be aircraft or components, we would also register it under the terms of this bill. In that way we would protect ourselves both vis-à-vis the aircraft as well as any other assets. The airline has a lot of trucks and other equipment which would fall within the provisions of this bill.

Senator Prowse: In other words, other creditors would have to protect themselves by looking to both places?

Mr. Coolican: That is right.

Senator Riley: Your floating charge would cover replacement of a complete aircraft?

Mr. Coolican: That is right. One of the questions that was raised during the earlier submission was the question of replacement of spare parts. I may not be as familiar with some of these provisions as Mr. Miller—correct me if I am wrong—but I think that in a lot of the documents which provide for financing of aircraft, there is provision that where you have a replacement—where the airline is making a replacement and has title to it—you acquire the ownership of that replacement part. If you do not, you are obligated to get title to it, purchase it from whoever in fact owns it. I think that is the usual procedure. When you are talking about a particular aircraft, you often have provision in the financing documents to give the owner, who would usually be the financier, the ownership of that particular part, and he releases ownership in the part that has been replaced.

The Deputy Chairman: Are there any further questions?

Mr. Coolican: I might add, we did not address ourselves to the constitutional problem in our brief. Our reasoning was that opinions are so diverse and you can come up with so many different opinions. Our feeling is that it is a problem. We feel that the best solution is the negotiated solution, and we hope this will be pursued. In the meantime, we endorse the other concept of the act—i.e. the central registry—provided we can get it into a form which we feel is workable.

Senator Prowse: From your point of view as a lawyer, a negotiated solution might be attacked by a third party on the grounds that one of the other parties has no right to negotiate.

Mr. Coolican: That is right.

Senator Prowse: I was thinking of an abdication as against the delegation of authority. Which would give you the better protection—the negotiated solution, which might be subject to being upset by the courts, or a decision in the courts, which you know you are going to be dependent upon regardless of how the provinces or the federal government might feel about it?

Mr. Coolican: As a lawyer, I would prefer the decision of the court. My concern would be that if you submitted a very complex bill, the decision you got might not be quite as categorical as you wanted. I wonder if, from a practical point of view, some form of negotiated settlement of the thing might not in the long run work.

Senator Riley: You mean double legislation.

Senator Langlois: In practice, how would you be able to obtain this allowance for priorities as between interested parties? You would have to do that with parties who are obtaining the security at the same time as you are.

Mr. Coolican: I have no problem with registering the agreement to a change of priorities. In other words, if you agree with a senior security holder that his security was to be prior, but the junior security holder registered in advance, you would register that agreement so that it would show what the order of priorities was.

I think clause 7 talks about notwithstanding other agreements to the contrary. If I am misinterpreting that language, I hope someone will point it out to me. My concern is that security holders, in trying to facilitate the operator's point of view, may be prepared to change their secured position. That would be done by agreement, and presumably that agreement would be registered, because it affected the interest of the security holders in the aircraft.

Clause 7 says:

> Notwithstanding any other law or agreement to the contrary—

The priority of registration would determine the priorities. I do not think that should be the case if, as between two parties, they agree on the reverse order. I think they should then be entitled to do that.

Senator Langlois: You would have a hard time convincing a mortgagee to step down in your favour, unless you buy him over.

Mr. Coolican: As someone who was prepared to put up additional financing, I am not sure that I would see it as my function. I think it would be the operator of the aircraft who would have to do the convincing whatever considerations he would have to give to them—

Senator Langlois: But he would not have an easier task than you would have.

Mr. Coolican: I presume it would be a very difficult task, but I think that sometimes, or very occasionally, it is done.

Senator Prowse: Now you can help it.

Senator Denis: But an aircraft is no different from any other investment that you make. Whether you make an investment in an aircraft, a house, or a car, they are all the same thing. Perhaps the amount is different.

Mr. Coolican: I think it is more than just the amount. An aircraft travels through territories and geographical areas that are out of the jurisdiction.

Senator Langlois: The problem is the mobility of the aircraft.

Mr. Coolican: Yes, it is the mobility that makes the difference, plus the point that was made earlier, that before you get to the end of the lifetime of the aircraft there is hardly a part of it that has not been changed. With a car or a house or with other traditional forms of security you just do not have those elements.

Senator Prowse: What about interprovincial truck lines?

Senator Denis: That would be so if that aircraft has had a hard time. If you read clause 9, paragraph 4, about the completion of the trip, you might find that interesting. Suppose that aircraft owner is short of money because he cannot meet his debt to the finance company. Is it better for you to let that aircraft complete the trip in order to be able to reimburse the passengers, or—

Mr. Coolican: I think, as long as the aircraft is still going to be in Canada you may be quite right, but the problem arises there that the aircraft may be going to a country where you are not satisfied that your rights will be enforced as they would be in Canada.

Senator Prowse: Like Havana.

Senator Denis: Like a charter aircraft on a trip of 7 or 21 days to Europe and back with 200 passengers. It is to the advantage of the financial people to let that trip be completed.

Senator Prowse: No.

Senator Denis: Otherwise those passengers will get a reimbursement, or something.

Mr. Coolican: The cost of reimbursing the passengers may be minimal in comparison to the price of the aircraft, which might, say, get stuck in Cuba, and you might never get the thing back again. I presume the only thing you, as legislators, are interested in protecting from this point of view is the paying passenger. You do not want him stranded in the middle of nowhere, having paid his fare. But presuming you could satisfy a court that you will take care of that, I cannot imagine that you are concerned at that point with what happens as between the lender and the borrower.

Senator Prowse: If you come in with an agreement from another airline which obviously can perform, they will bring him back, and there should be no objection.

Mr. Coolican: I cannot see your concern.

Senator Langlois: Your interest is not in stopping this aircraft at such and such a point of entry, to prevent him from carrying on. Your main interest is to obtain security before he leaves the country.

Mr. Coolican: It may be to stop the aircraft. We may decide that an operator just cannot operate the thing profitably, or certainly profitably enough to pay our financing, and that it may be going to another country where our rights will not be enforced, and where there may be other creditors who will seize it before we do.

Senator Langlois: If you have security deposited before the aircraft leaves Canada, you are protected.

Mr. Coolican: If you had dollars, and if your payments were made, then—

Senator Prowse: The problem would not arise.

Mr. Coolican: —there would not be a problem in the first place.

Senator Langlois: This would not apply to charter flights. This only applies to scheduled flights, I take it.

Mr. Coolican: No, I think a scheduled commercial aircraft includes a charter.

Senator Langlois: Not in the French text. The French text speaks of regularly scheduled flights.

Mr. Coolican: It was my understanding that it applied to charters as well.

The Deputy Chairman: May I ask Mr. Shields? Does it cover charter flights also?

Mr. Coolican: It refers to scheduled commercial air service, and I thought that included charter flights.

Mr. Shields: No.

The Deputy Chairman: It does not, no.

Mr. Miller: We have set that out in our brief as being something which should be added. May I make a further comment?

The Deputy Chairman: Will you come up to the front here so the reporter can hear you better, and the translators also?

Mr. Miller: On the question of passengers, and the question of their being stranded, or being reimbursed on the charter side today, charter airlines have to be insured against non-performance, and therefore your passengers would be wholly indemnified.

Do not forget that a lot of the problems you have seen in the press with respect to charter flights are in fact due to the failure of tour operators to pay the charter airlines and to fulfill their contractual obligations. Therefore the charter airlines have withdrawn their air claims. With regard to agencies—certainly in Quebec—there is a strong movement to have them bonded so as to save the passenger harmless.

The question of security is an interesting one, and we have addressed ourselves to that point as well, inasmuch as the airline may post a bond in order to seek the release of his airplane. That has pros and cons, but one problem we do see is the possibility of damage to the aircraft that can be disguised. In the Vesco incident, with regard to the repossession of the plane, the pilot very proudly claimed that he had monkeyed around with the controls to a degree that it would take three months for the manufacturer to find out where the problems were. That can be a severe problem.

Senator Prowse: That must be a crime. Is it not?

Mr. Miller: It still does not help the lender to have recourse against an individual.

Senator Langlois: I do not get you when you speak of the disadvantage of obtaining a bond. This is done regularly in shipping. We are seizing ships all over the place in Canada before they leave port. We obtain security in the form of a bond, or of money deposited in court, and there is no problem at all. I have been doing that for the last 35 years.

Senator Prowse: It would depend on the form of the bond, and a whole lot of things.

Senator Langlois: We arrest the ship, and we get the security, and there we are.

Mr. Miller: I hate to make points our of turn, but the point is that maritime law, or admiralty law, is far more developed on an international basis than laws respecting aircraft. I feel much more comfortable on the ships we finance and our ability to seize an asset and dispose of it virtually anywhere in the world under the tenets of admiralty law as they apply almost worldwide. The problem with aircraft is that that has not been the case.

Senator Langlois: One of these days you will say that in public.

Mr. Guthrie: With your permission, may I say something, Mr. Chairman?

The Deputy Chairman: Yes.

Mr. Guthrie: On the question of bond, Senator Langlois, I always like to feel that Quebec gets its proper exposure. By removing the seizure before judgment, which had as its adjunct the right to post security, we would be, as I said earlier, wiping out the recourse of posting security to permit that aircraft to take off, so I agree with the concept of the bond, and I do not think anybody will dispute it. But at the present moment we have a problem on the basis of this legislation, because in Quebec we would not be able to take advantage of that part of the Civil Code procedure.

Senator Asselin: You mean, to have a seizure before judgment?

Senator Denis: But you want more protection of your investment in aircraft than with anything else. Is that your conclusion?

The Deputy Chairman: You want good protection.

Senator Denis: You want better protection of your investment in aircraft than anything else.

Mr. Guthrie: I would reply to that in two ways. We do not want any better protection than anybody else for their asset, but I believe we must recognize that the asset that we are talking of is, first, an extremely valuable asset in terms of total dollars, and secondly, extremely mobile, as opposed to ships and railways, where you can literally run after the asset in question and catch it; with an aircraft it is a different story.

Senator Langlois: No, no.

Mr. Coolican: Most of the time you can.

Senator Langlois: If you have a Captain Erb you will not do that very easily.

Mr. Guthrie: I think there is a bit of Captain Erb in all of us.

The Deputy Chairman: Are there any more questions of our banker friends? If not, we will ask the Equipment Lessors Association of Canada to come up.

Mr. Coolican: May I add one last remark? That is, again, as in the case of RoyMarine, if the senators choose to amend the bill, or to adopt some of the suggestions that have been made, we would be glad to lend our assistance to any extent that we can in helping with that process.

The Deputy Chairman: Thank you very much.

I now call on the representatives of the Equipment Lessors Association of Canada, Mr. Frank Kennerley and Mr. Langdon. I understand Mr. Langdon is the president of the association, and Mr. Kennerley is the association's counsel.

Mr. Glen Langdon, President, Equipment Lessors Association of Canada: Mr. Chairman and honourable senators, thank you for the opportunity of presenting our brief to you. I sincerely hope that everyone has had a chance to leaf through it. We are in the position of following two particularly concise representations on the part of RoyMarine and the Canadian Bankers' Association. We would not like to waste your time by repeating information which you have already heard, and which basically we subscribe to. We do, however, have some comments to make with respect to the scope of the applicability of the proposed legislation.

We are concerned with the fact that there are over 10,000 aircraft operating in Canada. These are not all commercial

aircraft. There are actually less than 500 commercially operated aircraft. So there is a substantial number not addressed directly by all of the provisions of the current version of Bill S-5.

We also feel that we have a proposal to make with respect to the resolution of potential disputable jurisdictional authorities in implementing legislation.

With your permission, I should like Mr. Kennerly to address you with respect to our position on this point.

Mr. B. Frank Kennerly, Counsel, Equipment Lessors Association of Canada: Mr. Chairman and honourable senators, there is also before you a Canadian Bar Association brief dated 1964, which addresses itself to the constitutional issues. The whole scheme of the proposal of the Bar Association, which, in part, is repeated in our brief, is that you would simply have a central place to record interest in an aircraft. The substantive law of the particular contract or instrument or bill of sale, or whatever it is, would be the law of the province. All you would have would be a registry to register these documents. You would comply fully with the law of the province, but you would also have to record that interest in a central registry, presumably in Ottawa. The effect of recording that interest would be effective notice to any subsequent purchaser or encumbrancer of that aircraft.

I find it difficult to see how this is a constitutional issue in the face of the *Johannson* case, which dealt with property rights in fact. It had to do with the municipality of West Saint Paul which tried to pass a bylaw prohibiting an airport. It was decided in that case that the municipality did not have the authority or the power to so pass a bylaw. Now, that certainly has to do with property rights.

We have had legislation in this country for many years, the Carriage by Air Act, which limits the liability of the air carrier for the death or the injury of passengers. That is all that act provides for except that it also relates to baggage and there is a limitation there. But that certainly has been held to be constitutionally valid and it certainly deals with civil rights directly. It is necessarily incidental, however, to aeronautics which is within the federal jurisdiction.

So I find it very difficult to understand how people have a problem. If the system is one simply of recording the document, and if the person does not record the document in Ottawa, then he loses out to anyone who has recorded the document. It is similar to the shipping register which we have heard discussed here. I see no constitutional problem here at all in this type of scheme.

The bill before you involves itself certainly with substantive law having to do with the rights of people, and a great deal of procedural law is also included in there requiring the court order. I see no reason why you should include this procedural law, because each province has it own procedural law with respect to seizure and repossession, et cetera. In the Province of Quebec I understand a court order is required. It is not so required in most other provinces. So why not leave the procedural law and the substantive law as it is today and simply afford to the subsequent purchaser or the encumbrancer the protection by being able to go to one central registry to find out who has an interest in that airplane. If that person has not registered in that registry, then he can take title or encumber that airplane without worrying that someone else might come along and take the airplane.

There is no practical way in which any lawyer in this country can certify that the title to an aircraft is clear, whether it is a 747 or a Piper Cub, unless he searches in every province, and in some cases in every county in every province, in this country. That is a rather impractical system.

The other advantage of having a central registry is that we can implement the Geneva Convention, which we became a signatory to 25 years ago. And, senators, I assure you that I do not feel you are hurrying it up, having waited 25 years.

The protection afforded by this convention is that with respect to a Canadian aircraft, when it is in a foreign signatory country, a signatory country to the Geneva Convention, the rights of anyone who has recorded an interest in that aircraft in the Canadian registry take priority over any rights any person may acquire in the foreign signatory country over that aircraft, other than certain salvage rights and preservation costs and things of that nature.

This protection is not presently being afforded to Canadian aircraft in foreign signatory countries, because we do not have a central registry. But we in Canada must recognize the rights in foreign signatory aircraft while they are in Canada. So it is a one-way street. The others are taking advantage or having the advantage of this situation, whereas we cannot take advantage of it for our people in our aircraft, because we do not have a central registry.

The situation is, in fact, that many aircraft are financed. They are not airline airplanes. I would suggest that we probably do not have more than about 300 airline jet aircraft in this country under Canadian registry whereas there are more than 10,000 aircraft in total. So the problem is significant to the person who buys a $10,000, $20,000, $30,000 or $50,000 aircraft. It is quite significant.

This is where the problem is. This is where the repossessions occur. This is where the person buys an aircraft, and then finds an encumbrancer coming out of the woods saying that he has an encumbrance on that airplane that was registered in some very strange county somewhere, and he loses his interest in the airplane. This, in fact, is happening, although it is not happening regularly with large commercial airplanes.

With respect to engines, the question was raised as to how to handle this situation. We would suggest that the engine be registered in the same way as the aircraft is, and that it have a nationality when it is first registered and first comes into service. Then if it goes to a foreign country, the Canadian registry on that engine has to be cancelled before it can be registered in the foreign country, in the same way as aircraft.

You are dealing with engines. The suggestion in our brief, and in the Canadian Bar Association brief, is that engines over 850 horsepower should be registered. We are talking of values in excess of $10,000 there. All turbine engines should also be registered because you cannot get any of those under $30,000 or $40,000. You have heard people say today that the values can go up to over $1 million.

The two essential reasons are to enable an aircraft purchaser or encumbrancer to search that title and to determine he has clear title, and also to afford to Canadian aircraft abroad in a foreign signatory country the protection of the Geneva Convention.

It is a recording system, and a recording system only, of the document itself, and if you rely upon the substantive law of the province, then I do not see any constitutional problem at all.

I would be happy to answer any questions, if you have any.

Senator Langlois: Mr. Kennerly, when you say in your brief—and you have repeated it verbally—that the substantial validity of the instrument and the validity of the substantive rights under such an instrument would not be affected by the creation of a central registry, how can you say that in the light of the provisions contained in clause 7 and clause 8 of the bill? In clause 7 you read:

> Notwithstanding any other law or agreement to the contrary, a person—

And then you have this priority of registration, which gives a priority to the claims, so this would affect the substantial validity of the instrument.

Mr. Kennerly: Perhaps I am suggesting senator, that that is a procedural aspect rather than a substantive law as to whether or not the instrument is valid. Yes, to an extent we are infringing upon the substantive law only to the extent of the registration. So, if it is not registered it is not valid.

I was thinking more of the substance of the document—whether it had a witness, whether it had a particular type of affidavit—and remembering, as well, that initially there will be a requirement to register, according to the provincial laws, where registration is required, and hopefully the provinces will realize there is a central registry in Ottawa, and they will, in time, amend their legislation and not require registration under provincial laws.

Senator Langlois: Would it be much better to have the decision before this bill is passed.

Mr. Kennerly: I think this law should be enacted first and then the provinces would follow suit. I feel it would be a very long time before we would get agreement from all the provinces.

Senator Asselin: Well, we must have that.

Mr. Kennerly: I feel that this legislation can go forward, and we are not suggesting with this legislation that there no longer be a requirement to register in the provinces. The provinces in time, I should think, obviously, realistically, would amend their legislation realizing there is a central registry office in Ottawa, and they are requiring people to make duplicate registration within the provinces.

Senator Asselin: The provinces will not give up their property rights.

Mr. Kennerly: It is not a matter of giving up their rights.

Senator Asselin: They cannot give their jurisdiction to the federal government.

Mr. Kennerly: We are not suggesting they do that—at least our brief does not suggest that. It simply says that we establish in Ottawa a registry.

Senator Asselin: It is too simple in my mind.

Senator Prowse: You get one more—

The Deputy Chairman: Order. I am sorry to interrupt, but I think we should only have one person speaking at one time, because it is very difficult for the reporter.

Senator Asselin: I do not want to raise any legal question with the witness because it would take too much time to deal with it, but I do not agree with what the witness says regarding constitutionality and legality.

Senator Langlois: But he agrees with the Privy Council and the Supreme Court of Canada. He is in very good company.

Senator Prowse: And, I might add, the Department of Justice.

Senator Forsey: Whether those judgments are, in fact, applicable, surely Senator Asselin's point is whether the particular judgments which have been quoted are relevant, and I confess I have some doubt on the point.

Senator Langlois: The Canadian Bar Association said the opposite.

Senator Forsey: Yes, I know, but they are not infallible.

Senator Langlois: Nobody is.

Senator Prowse: May I ask this question to get it clear: I understood from the previous witnesses that their complaint is that there are so many searches necessary now that it is almost an impossibility, and that they are subject to so many different jurisdictions it is practically impossible for them to enforce their security at the present time for all intents and purposes.

What they want is to have a single central registry so they can then go to one federal court and the problems would be solved. Is not this the application, or am I misunderstanding somebody?

Mr. Kennerly: No, not quite, with respect, senator. The situation today is that it is practically impossible to certify that there is no outstanding encumbrance on an airplane.

Senator Prowse: Yes.

Mr. Kennerly: With a central registry you would be able to do this. You would be able to certify how good the title is and what encumbrances there are on the aircraft, because unless a person is registered in the central registry the instrument would not be valid, or the security on the aircraft.

Senator Prowse: Yes, but would that not interfere with the validity of a security which is registered in a county somewhere and not taken on to the central registry. Would that not then be attacked by the superior court order in that province?

Mr. Kennerly: Exactly, and my suggestion is that there is the constitutional ability of the Parliament of Canada to pass such a law requiring registration in addition to provincial registration, and if that registration were not effected it would not be a valid registration to someone taking an interest in the aircraft without actual notice of that instrument.

Senator Langlois: And you are prepared to go along with the suggestion made by the Department of Justice of Quebec when they suggested that this bill, S-5, should recognize the securities registered with the provinces provided they are passed along to the central registry?

Mr. Kennerly: The suggestion in our brief, senator, is that the document would, in fact, be registered with the regional office of the Ministry of Transport, and in that way communicated to the central registry. There are regional offices in Moncton, Montreal, Toronto, Winnipeg, Edmonton, and Vancouver. So that a person could register his interest in an aircraft in any one of those offices, and that information would then be communicated to Ottawa as is done with your shipping registrations in the east and west.

Senator Langlois: In the case of ships, this is done through customs offices.

Mr. Kennerly: Yes.

Senator Langlois: But you are in agreement with this?

Mr. Kennerly: Absolutely, senator, and we would be very pleased to continue an ongoing discussion on this for the purpose of amending the bill and bringing it into line with what we think.

Senator Langlois: So you are suggesting that the creation of this central registry is a solution in the right direction, but it is not the perfect solution; that some further improvements in provincial legislation may be necessary. Have you approached the provinces in that respect?

Mr. Kennerly: No, absolutely not.

Senator Asselin: You should.

Mr. Kennerly: We do not feel—perhaps I do not feel—that it is necessary to go to the provinces. The feeling is that if you pass legislation requiring an interest in an aircraft to be registered at a central office, then that law will be valid law—good law.

The Deputy Chairman: You do not expect any conflict of interest? The answers we have received from most of the provinces say it is *ultra vires*, so we are caught with that.

Senator Langlois: They have left it at that, with no suggestion whatsoever?

The Deputy Chairman: No, some have suggested that the federal government get in touch with them in order to reach some kind of compromise. From what I am seeing now, and from the discussion, I think it would be one way to do it.

Senator Asselin: I think that is a good point, Mr. Chairman. If we adopt that legislation as it is, without consulting with the provinces, we will create, I think, a conflict and the provinces might attack the bill before the courts. We want to avoid this. As I said at the beginning, we should try to send the bill before the Supreme Court and ask the provinces to put their cases before the court, because we received representations from the provinces. We cannot go along without consulting the provinces.

Mr. Kennerly: I find it difficult to understand why the provinces would object to a bill that simply provided for the recording of the instrument in a central registry in Ottawa, without any procedural provisions in the bill, without any reference to the provincial law, other than that the validity of the instrument will be determined according to the law of the province.

I would think it is less likely they would have an objection to a scheme or situation such as that if the bill were so amended.

Senator Riley: Mr. Kennerly, I think you are being rather presumptive, because when this bill first came before this committee a question was asked as to whether or not the provinces had been consulted. We had an unofficial indication that they had, but when we delayed the hearings in order to get an expression of opinion from the different provinces, we learned that they had reservations, although most of them, as Senator Langlois has pointed out in connection with Quebec, have indicated there is an area of compromise, probably, and it could be negotiated. I think it is very presumptive on your part, or anyone else's, to indicate that the Parliament of Canada should ride roughshod over these reservations which the provinces have. The provinces must be consulted. There must be some negotiation, if it is possible, and an indication that they want to delegate the authority to provide for a central registry. But, as I see it, even if the registration is in every county in some provinces, conflicts will arise from time to time. I cannot see this point of suggesting to the committee that Parliament ignore the provinces, in the light of what we have on record here.

Mr. Kennerly: Senator, I am expressing my view as a lawyer, which is substantiated by the Canadian Bar Association, and I have also had discussions with members of the Department of Justice, who have expressed the simple pure legal view that it is within the legislative jurisdiction of the federal government to pass such a recording central registry bill. There are, of course, other aspects of your relationship with the provinces. But from a purely legal point of view, I suggest that you can do this. Whether politically you wish to do this, is another question.

Senator Prowse: Aside from the political aspect, certainly we have a right to pass this bill. You have a right to think you have a perfectly good security. You go ahead and start to make your seizure with through the Federal Court here in Ottawa, and then someone finds out about it in Alberta, and goes down to the court in Alberta and gets an order. We then have fun until you get out of the matter through the Supreme Court of Canada. At $12,000 a day, you are not going to be out of that operation until you have lost all your money.

Mr. Kennerly: That is true, but it is better to have a central registry than wait another 25 years.

Senator Prowse: I will agree with that.

Mr. Kennerly: I suggest it may take 25 years to get all the provinces to agree to some compromise.

Senator Langlois: A century!

The Deputy Chairman: Are there any further questions?

Mr. Guthrie: Mr. Chairman, I have one last comment apropos Mr. Kennerly's remarks. Once again, one of the great advantages of the second oldest profession is our ability to disagree in a friendly manner among ourselves.

On the suggestion of the central registry—leaving aside the substantive rights to the provinces—I fully agree with that in principle, but I will stick to my own province, Quebec, and suggest that although it sounds very easy when we use the expression "leave the substantive rights,"

one situation that immediately comes to mind is that we do not have a system for registration of movable security other than commercial pledge, but we do have some very specific rights and priorities. This is where the problem arises—the priorities of the rights which are established on movable property by article 1994 of the Civil Code.

One of the immediate problems that I can see recurring would be in respect of an aircraft that happened to be within the jurisdiction of the province of Quebec, where there was an unpaid vendor and he has a specific place in the ranking of the hierarchy on that piece of equipment, and that hierarchy is set up by article 1994. If he should commence a seizure and it turns out that some other creditor—possibly just a straightforward creditor in another province—has a judgment, he comes rushing down to the province of Quebec and says "I have registered my right in the central registry," and the courts of Quebec are called upon to determine who has what right. Secondly, if it is a question of executing and selling the asset, the aircraft, and who gets paid first, we have a problem in priorities of rights.

Mr. Kennerly: Mr. Chairman, if I may respond to my friend, essentially the provision is in our brief, with respect to possessory liens. A repairer has the right to retain possession of an aircraft until he is paid. In certain jurisdictions possession can be passed back to the owner by contract, and the person can still retain that right to retake possession until he is paid for repairing the aircraft. Our brief suggests that where possession is given up, there must be registration in the central registry. I would suggest, in this instance, where you have an unpaid vendor, if he has not been paid and he gives up possession, he must register.

Mr. Guthrie: If he does not register—

Mr. Kennerly: If he does not register he is out of luck. He would be down on the totem pole.

Mr. Guthrie: This is where I say that I think we have a problem. I know we have one in Quebec. I am not absolutely sure of the situation in the common law provinces.

Senator Llanglois: The same situation obtains in Quebec in connection with shipping. Under the Civil Code you have these previleges of outfitting the ship for the last voyage, crew wages, and so on. There are privileges established there which are in conflict with the privileges under common law for necessaries.

Mr. Guthrie: You are quite correct, senator.

Senator Langlois: I have myself found that an advantage. When my client was in a better position under the Civil Code, I would go before the superior court and, under the Civil Code, take advantage of the appropriate provisions. When I thought that my situation was much better under the common law, I would go before the Federal Court and take my action for the necessaries there. The same situation obtains.

Mr. Guthrie: I agree. Of course, it provides added flexibility for lawyers.

Senator Langlois: Yes; it is useful at times.

Mr. Guthrie: It is useful when it comes to court proceedings, but when it comes to expressing an opinion to a client on an X million dollar deal, the pros and cons of both sides become rather acute.

My point is, of course, that the area of shipping is specifically dealt with and reserved. In other words, the framework of the constitutional problem has been clearly carved out. I would hape that we could use that analogy and the same argument with respect to aircraft.

Senator Langlois: I made my point not on the constitutional aspect, but on the situation that you have described—the conflict of laws and priorities of rights. You will not be in any worse position than with shipping.

Mr. Guthrie: I am not suggesting it would be worse. I am suggesting it would have an effect on an established ranking set up in the Civil Code. What that effect may be would depend on the facts of the situation. It may or may not get into the categories of the Civil Code. You may not want to get into that.

The Deputy Chairman: Are there any further questions? If not, I would like to thank you gentlemen for coming here today. It was very interesting, and it will be very helpful to members of the committee in reaching some conclusions. I do not know what the conclusions will be. There is not a straight line, as I see it. Thank you very much. If we need you again, we will take the opportunity of contacting you. Will you be able to return if necessary?

Mr. Kennerly: Yes indeed, Mr. Chairman.

The Deputy Chairman: Thank you. Honourable senators, before we adjourn, and after having heard all the evidence this morning, what will be our next step? Should we hear from Mr. Shields and advisers of the Department of Transport? We should give him a chance to read the evidence and the briefs which have been presented, and later on we could call upon him to appear before the committee as a witness.

Senator Langlois: Have we invited the Canadian Bar Association to appear?

The Deputy Chairman: No. They have sent their brief. At our next sitting we could invite the Canadian Bar Association. Mr. Brean, of Winnipeg, is chairman of the loss section of the Canadian Bar Association. If it is your wish, we could call on Mr. Brean or his representative, and at the same time we could hear the legal adviser of the Department of Transport. We would then be in a better position to determine what we should do.

Senator Asselin: The representatives of the provinces seem not to be interested in appearing before the committee.

The Deputy Chairman: Well, I would not say they are not interested. They have answered our letters. You have a copy of their remarks. I do not think it will be necessary to call all the attorneys general or their representatives to come up here.

Senator Asselin: As one witness said this morning, we have a special problem with the province of Quebec with regard to the registration of priorities and rights.

The Deputy Chairman: I am in your hands. If you decide we should call upon somebody in the office of the attorney general, or the minister of justice, as they call him in Quebec, I have no objection. Then we could have representatives of the Canadian Bar and representatives of the legal division of the Department of Transport.

Senator Langlois: Am I right, Mr. Chairman—and correct me if I am wrong—in saying that the province which took a positive attitude is the province of Quebec. All the others took a negative attitude, and did not make a suggestion, or offer to appear before this committee. In that situation I think we should invite them all to come, to see how serious they are about this problem.

Senator Prowse: They will write back and say that if they have any problems they will discuss them with the Minister of Justice themselves.

The Deputy Chairman: Well, some of them have expressed their views very clearly. As a matter of fact, I think it was Prince Edward Island that said, "You realize it is "itultra vires", and if we do pass the bill they will appeal. They will take the question before the courts.

Senator Langlois: That is their privilege.

Senator Asselin: We want to avoid that, though.

The Deputy Chairman: Yes. I think that is one thing we should look into, taking into account the evidence before us this morning. We should also try to get somebody who will perhaps arrange some kind of a compromise. I do not know if I am a good lawyer in those circumstances, but I feel that we all agree that it is a good thing to have the central registry. That is the main point. Now, how do we arrive at that?

Senator Riley: By negotiating with the provinces.

The Deputy Chairman: Well, that is the way I feel.

Senator Langlois: But not for half a century. It will take about half a century before we get this agreement.

Senator Riley: I do not think so.

The Deputy Chairman: Take Quebec, for instance. They have suggested one way to do it. That means that at least they are open to discussion.

Senator Langlois: They have not taken the position that this legislation would be *ultra vires* of the government of Canada.

The Deputy Chairman: If we could take that suggestion by the province of Quebec and send it to the other provinces, asking for their reactions to it, that might be of some help.

Senator Langlois: I have no objection to that.

The Deputy Chairman: Well, instead of having all the attorneys general here, or their representatives—to which I have no objection, of course—I think the best way will be to put this matter to our steering committee. They should look into it. Either the committee, or the steering committee, should decide what to do next.

Senator Burchill: Is Quebec the only province that raised any objection?

Senator Langlois: It did not raise any objection. It is the only province that did not.

The Deputy Chairman: Quebec made a suggestion. Of course, Quebec is with the other provinces. They say it is *iltra vires* because it affects civil rights and property. That is the point they raise. So now it is up to us.

Senator Langlois: They did not say that in their second letter at all. They make a suggestion. They are very positive.

The Deputy Chairman: Yes, but they do mention in their letter that they think it comes under the jurisdiction of the province. This, I think, has been expressed. Of course, being a lawyer, you may see something else in it, but that is the way I read it and that is the way I understood it. If you are agreeable, gentlemen, we will leave it to the steering committee.

Senator Riley: I move that the steering committee decide what kind of witnesses they want.

The Deputy Chairman: But before we do that we shall have to have another meeting, and tell the members what we intend to do as far as other witnesses are concerned.

Senator Asselin: Agreed.

The Deputy Chairman: Are there any other points?

Senator Riley: I would just like to point out that New Brunswick has indicated that that province, through its attroney general, or minister of justice, is prepared to work something out in respect to this.

The Deputy Chairman: Well, that is what I think, but I am not sure.

Senator Riley: I agree that we should hear a representations of the Canadian Bar Association because their brief is dated 1964. There may be a change of thinking in respect of this.

The Deputy Chairman: Mrs. Pritchard, have we not received a letter lately from the Canadian Bar Association saying that they are still of the same views that they expressed in 1964? Mrs. Pritchard has a letter on file, saying that the Canadian Bar Association still has the same views that it expressed before.

Senator Langlois: Would you mind reading that letter into the record?

The Deputy Chairman: Would you read it, please, Mrs. Pritchard?

The Committee Clerk: This follows the announcement that the brief was coming from the Canadian Bar Association.

> Re: Bill S-5 "Aircraft Registry Act."
>
> As I mentioned to you on the telephone this morning, we are sending to you copies of our 1966 brief to the Minister of Transport, stating the views of the Canadian Bar Association on the subject of Central Aircraft Registry. In order to avoid delays in the mail, we are having the brief delivered to you by Air Canada throught the courtesy of Cameron Des Bois, Immediate Past Chairman of the Air Law Section.
>
> You will note from the brief that the Canadian Bar Association strongly supports the concept of Central Aircraft Registry. That was the position of the Canadian Bar Association in 1966; that is the position of the Association to-day.
>
> As I mentioned to you this morning, if your Committee does not have at its disposal a comparison of the Geneva Convention with Bill S-5, and if the Committee thinks such would be useful, please let me know, and I will prepare one for you.

Thank you for sending to me the replies of the Provincial Attorneys-General. You will see that the Canadian Bar Association brief is of the view that Central Aircraft Registry is within the competence of Parliament.

Out of an abundance of caution, I enclose a copy of the brief.

Senator Riley: Mr. Breen mentions a 1966 brief. The one I have here is dated May 12, 1964.

The Committee Clerk: I think they have sent something subsequently, sir.

Senator Riley: We do not have that.

Senator Prowse: It was reconfirmed in 1966, perhaps.

The Deputy Chairman: In any event, I think we can clear up that point.

Mr. Kennerly: Mr. Chairman, perhaps I can clarify that, since I wrote the Canadian Bar Association brief as well. Mr. Breen is in error in the date. The brief is dated 1964. He was talking about the same brief.

The Deputy Chairman: It is probably a typographical error.

Senator Langlois: They should be invited to send somebody, too.

The Deputy Chairman: To our next meeting?

Senator Langlois: Yes, I think so. This does not prevent you considering the other solutions that were offered so far as the attorney general is concerned.

The Deputy Chairman: Is that agreeable to the members of the committee? Of course, we have the brief in which they explain everything, but I am in your hands again. If you want to call upon the representatives of the air loss section or the Canadian Bar Association, I am in your hands.

Senator Asselin: Mr. Chairman, it would be interesting if we were to call other witnesses to discuss the constitutionality and legality of the bill. The committee is divided on this important question. I think all of the members of the committee should meet to decide whether to continue with the bill as it is, or to refer it to the Supreme Court of Canada in order to have the provinces make their cases before the Supreme Court of Canada. In my opinion, we should look at that very closely.

Senator Forsey: Yes, I agree.

The Deputy Chairman: As I have said, and as you know quite well, I am not a lawyer and I am caught here in this situation. However, with your help—

Senator Asselin: You were doing very well.

The Deputy Chairman: I am trying to do my best.

Senator Prowse: You are learning.

The Deputy Chairman: Yes, I am learning. I am learning the hard way, I would say.

Senator Langlois: Mr. Chairman, perhaps I have a view which is opposite to that of my friend, Senator Asselin, on the validity of any legislation in that field, but I am prepared to agreed to a referral of this legislation to the Supreme Court. However, I do not think that should stop us from hearing further evidence.

Senator Asselin: I agree with that.

The Deputy Chairman: Would you leave it to the steering committee, then, to make some suggestions later on.

Senator Forsey: That was Senator Asselin's motion, was it not?

The Deputy Chairman: Yes, I believe it was. I believe the motion was that the question should be left for the steering committee to decide, and report back.

Senator Asselin: Yes.

The Deputy Chairman: The second point is with respect to other witnesses. We should call the Canadian Bar Association and representatives of the legal branch of the Department of Transport, but what about officials of the Justice Department?

Senator Langlois: I have no objection to that.

Senator Forsey: I would think so.

The Deputy Chairman: Because they are our advisers.

Senator McElman: You may as well have as many conflicting legal views as possible.

The Deputy Chairman: Senator McElman is not a lawyer, but that is pretty good.

Senator Prowse: He has had dealings with them, though.

The Deputy Chairman: Honourable senators I think the committee could now adjourn.

The committee adjourned.

Published under authority of the Senate by the Queen's Printer for Canada

Available from Information Canada, Ottawa, Canada

Government
Publications

CA1 YL M
-75

FIRST SESSION—THIRTIETH PARLIAMENT
1974-75

THE SENATE OF CANADA

PROCEEDINGS OF THE

STANDING SENATE COMMITTEE ON

TRANSPORT AND COMMUNICATIONS

The Honourable J. CAMPBELL HAIG, *Chairman*

Issue No. 7

Thursday, April 17, 1975

Complete Proceedings on Bill C-48, intituled:

"An Act to amend the Railway Act"

REPORT OF THE COMMITTEE

(Witness: See Minutes of Proceedings)

LIBRARY
UNIVERSITY OF TORONTO

28345—1

STANDING SENATE COMMITTEE ON
TRANSPORT AND COMMUNICATIONS

The Honourable J. Campbell Haig, *Chairman*

The Honourable Maurice Bourget, *Deputy Chairman*, P.C.

The Honourable Senators:

Blois	Lawson
Bourget	McElman
Burchill	Molgat
Darvey	O'Leary
Denis	*Perrault
Eudes	Petten
*Flynn	Prowse
Forsey	Riley
Graham	Smith
Haig	Sparrow
Langlois	Welch—(20)

(Quorum 5)

**Ex officio* members

Order of Reference

Extract from the Minutes of the Proceedings of the Senate, April 8, 1975:

"Pursuant to the Order of the Day, the Honourable Senator Cook moved, seconded by the Honourable Senator Paterson, that the Bill C-48, intituled: "An Act to amend the Railway Act", be read the second time.

After debate, and—
The question being put on the motion, it was—
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Cook moved, seconded by the Honourable Senator Paterson, that the Bill be referred to the Standing Senate Committee on Transport and Communications.

The question being put on the motion, it was—
Resolved in the affirmative."

Robert Fortier,
Clerk of the Senate.

Minutes of Proceedings

Thursday, April 17, 1975

Pursuant to adjournment and notice, the Standing Senate Committee on Transport and Communications met this day at 9:30 a.m. to consider Bill C-48, intituled "An Act to amend the Railway Act".

Present: The Honourable Senators Haig, (*Chairman*), Bourget, Burchill, Denis, Forsey, Langlois, McElman, Petten, Riley and Smith. (10)

In attendance: Mr. R. L. du Plessis, Legal Adviser, Department of Justice.

The following witness was heard:

Mr. Yvon Soucy,
Railway Systems Officer,
Ministry of Transport.

After discussion and upon Motion of the Honourable Senator Burchill, it was *Resolved* to report the said Bill without amendment.

At 10:05 a.m. the Committee proceeded to consider the next order of business *in camera*.

At 11:15 a.m. the Committee adjourned to the call of the Chairman.

ATTEST:

Mrs. Aline Pritchard,
Clerk of the Committee.

Report of the Committee

Thursday, April 17, 1975

The Standing Senate Committee on Transport and Communications to which was referred Bill C-48, intituled: "An Act to amend the Railway Act" has, in obedience to the order of reference of Tuesday, April 8, 1975, examined the said Bill and now reports the same without amendment.

Respectfully submitted,

J. Campbell Haig,
Chairman.

The Standing Senate Committee on Transport and Communications

Evidence

Ottawa, Thursday, April 17, 1975

The Standing Senate Committee on Transport and Communications, to which was referred Bill C-48, to amend the Railway Act, met this day at 9.30 a.m. to give consideration to the bill.

Senator J. Campbell Haig (*Chairman*) in the Chair.

The Chairman: Good morning, honourable senators, I am very pleased to be back. I wish to thank Senator Bourget for chairing the committee while I was away.

The procedure this morning will be that Mr. Yvon Soucy, Railway Systems Officer, Ministry of Transport, will explain Bill C-48, which was introduced in our house by Senator Cook on April 8. It received first and second reading and was referred to this committee.

Following that, we will adjourn and hold an *in camera* session to discuss the French television program. We will also discuss the bill in regard to aircraft registration. In the meantime, we will hear Mr. Soucy explaining Bill C-48.

Stnator McElman: Mr. Chairman, before the witness begins, on behalf of the committee may I say how delighted we are to have you back?

The Chairman: Thank you.

Mr. Yvon Soucy, Railway Systems Officer, Ministry of Transport: Mr. Chairman, honourable senators, with your permission I shall summarize the intent of the legislation and explain the purposes of the bill. We wanted a bill to provide the Canadian government with information with respect to railway costs, because at the present time that information is provided to the Canadian Transport Commission for its use alone. The second point is that we wanted to provide the information on railway costs for the confidential use of the provinces with respect to policy formulation purposes. Thirdly, we wanted to provide information with respect to railway costs for the use of a province arguing cases before the CTC. At present when the provinces appear before the CTC they have no information with respect to railway costs. The reason for this is that the Prime Minister, at the Western Economic Opportunities Conference in 1973, told the Western provinces that he would do whatever was necessary to make such information available to them. In view of this, and before this bill was introduced, the railways have meanwhile provided information with respect to specific cases. They have co-operated, but the provinces still feel that it takes too much time and that maybe in a few years the mechanism will go down and they would lose such access to information. They therefore requested the Minister of Transport to introduce legislation ensuring that such railway costs will be provided to the provinces on a long-term basis.

Bill C-48 gives power to the Minister of Transport to ask the railway for railway costs. When the provinces want railway costs, they must first ask the Minister of Transport, and the minister goes to the railway and asks for those costs, making sure that the demands or requests of the provinces are reasonable. We did not want the provinces to be able to go directly to the railways and make unreasonable demands or requests. The provinces ask the Minister of Transport for information on railway costs, they say how they are going to use that information, and the Minister of Transport obtains the information from the railway through the CTC. When the information comes back to the minister, the minister decides what shall be given to the Western provinces.

The information generally is given to the provinces on a confidential basis. When the provinces want to use railway costs information at CTC hearings, the minister is told about it, and we would seek the advice of the CTC as to whether it can be done in the national interest without creating problems. When the minister is assured that the information will be used at CTC hearings in the national interest, he gives permission to the provinces to use the confidential information at CTC public hearings. That is a summary of the intent of the bill.

Senator Smith: Does that exclude the possibility of having *in camera* meetings with the provinces, or whoever else is interested, and using that confidential information at *in camera* meetings, so that the public would not have access to it?

Mr. Soucy: The provinces have to make sure, when the information is given to them on a confidential basis, that they protect that confidentiality.

Senator Smith: Would there be sufficient protection for the confidentiality if the CTC, at their hearings, excluded the press and those who were not directly concerned, and held those hearings *in camera*?

Mr. Soucy: The CTC hearings are public hearings. They always have transcripts, and those transcripts are public. You can ask the CTC to provide you with the transcript of the hearing. Before the information is provided to provinces to be used at CTC hearings, they must have the prior permission of the Minister of Transport.

Senator Forsey: Is that under the new section 331.4? Section 331.3(3) says:

> Any information furnished under section 331.1 or 331.2 that is relevant to any proceedings under this Act, the National Transportation Act or the Transport Act may, for the purposes of those proceedings, be published or communicated—

Is that what you are speaking about now?

Mr. Soucy: You are asking about subsection (3)?

[*Translation*]

Senator Forsey: My question refers to sub-section (3) of section 331.3, which begins by the following words:

> "Any information furnished under section 331.1 or 331.2 that is relevant to any proceedings under this Act . . .," etc.

Do your comments refer to this article?

Mr. Soucy: My comments refer to the whole bill. I have summarized the intent of the bill as a whole.

Senator Forsey: Yes, I am aware of that. However, the reason why I am asking this question is that I do not find here, in this particular section, any provision concerning the authorization of the minister. Maybe I have not quite well understood.

Mr. Soucy: Senator, the authorization of the minister is implied in the whole bill. Presently, when provinces ask the minister for information, they have to give the reason why they need such information. If, for example, they need it in connection with a Canadian Transport Commission is inquiry, they have to inform the minister accordingly. Then, the minister advises the provinces on how exactly they can use the information and that they are not allowed to use it for another purpose. That is to say that when the minister provides the provinces with the information they need, he tells them exactly how they can use it.

Senator Denis: In section 331.1 (1)*b*), we read the following:

> "relative to the costs of the company in moving specified commodities generally or between specified points".

There is nothing about passengers, even though the same problems may arise for them.

Mr. Soucy: If the provinces want to use that for the railway costs concerning passengers, they are allowed to.

Senator Denis: Why does the Act not say that? I quote:

> "relative to the costs of the company in moving specified commodities generally or between specified points"

Is a passenger a commodity?

Mr. Soucy: No. I mean that railway costs are very complex. When we try to establish railway costs, we must take into account the allocation for passenger transportation. Then, automatically, if the provinces want to examine railway costs regarding freight, passenger transportation and express transportation, in order to establish how these costs are distributed, they are allowed to ask for such information. However, the provinces are particularly interested in obtaining information concerning freight. They are aware of that situation.

Senator Denis: But we are not aware of that. A province may wish to know how many passengers have used railways.

Mr. Soucy: The province may obtain this information without this bill.

Senator Bourget: Mr. President, may I ask a question following that of Senator Denis? When the minister tabled this bill in the House of Commons, it was stated on page 3337 of Hansard of February 18, 1975, in the French version:

[*Text*]

> For this purpose the information on costs is defined as cost of "transportation services and operations" or "costs of a specified movement of specified commodity," for example, a car load of cattle from Edmonton to Montreal.

[*Translation*]

Coming back to the question of Senator Denis, I wonder whether passengers are considered as commodities? I do not know if "commodity" is a generic term.

Mr. Soucy: Senator, when you have mentioned "transportation services", you have given the answer. Those "transportation services" for passengers are indeed transportation services. However, generally speaking, the interest of the provinces in the Bill concerns the freight transportation. They are not really interested in the passengers' transportation. You ask if the provinces wish to get information on the costs of passengers transportation and if they want to use this bill to obtain it. I tell you it is possible. Indeed, if the provinces want to know what are the costs of freight transportation and those of passengers transportation, they can obtain the information they want. For example, the same locomotives are often used on the same railway line both for passengers and freight transportation. Then, if provinces really want to establish the distribution of costs between freight and passengers transportation, in order to make sure that it is fair and that the costs are really fair also, they can ask the Minister of Transport to authorize them to obtain the information they need. However, the Minister may refuse their request.

Senator Denis: Do you have further objections to raise? It would not be difficult to add a few words such as "and the passengers", in order to make the bill much more clearer.

> "Relative to the costs of the company in moving specified commodities generally or between specified points, and passengers".

Do you object to such an amendment?

Mr. Soucy: Personally, I have no objection to raise. However, I want to tell you that when the Prime Minister discussed the question of providing the provinces with the cost of freight transportation, the four provinces seemed to be satisfied with the explanation given to them. Presently, Bill C-48 meets the needs of the four provinces. I wonder why you want to give them more than what the Prime Minister intended to give them on July 1973? At the moment, the provinces are satisfied. If you offer somebody $1. and if he is satisfied, why should you tell him that he can get $1.50? He would not refuse $1.50.

Senator Denis: Yes, but the Government of Canada is interested to know.

Mr. Soucy: As far as the passengers transportation is concerned, the Government of Canada obtains this information from the Canadian Transport Commission. Presently, however, the Canadian Transport Commission use this information concerning the costs only for its own use. At the moment, the Government of Canada does not face any problem concerning the cost of passengers transportation, as far as the use of those costs is concerned. There is no problem on that matter.

[*Text*]

Senator Burchill: This information, I understand, is to be kept confidential. It will not be disclosed publicly.

Mr. Soucy: It will be kept confidential, senator. If any one of the provinces wishes to use some of the information in public hearings, through the Canadian Transport Commission, it must seek permission of the minister to do so. The provinces do not have the right to use such confidential information in public hearings without the permission of the Minister of Transport.

Senator Burchill: Is the minister satisfied that he can control the provinces? I concede that he can control the CTC, but I am wondering whether he can control the provinces.

Mr. Soucy: If the provinces do not respect the confidentiality of this information, it is open to the minister to choose not to provide any further information of this type to them in the future.

Senator Argue: I am wondering why this information should be confidential at all. The railways are important to this country, and competition is important. It seems to me that it would be in the interest of the nation for the public to be aware of the costs, without going through this rather circuitous method of obtaining that information. In any event, if the provinces obtain the permission of the minister to use such information publicly, the outcome will be that it will be public. It would seem to me to be far better if this information were public in the first place.

Mr. Soucy: I would only say, senator, that the bill before you is viewed by the Minister of Transport as an interim measure pending the introduction of a comprehensive bill which will cover all modes of carriers coming under federal jurisdiction. The present bill is simply to satisfy the commitment of the Prime Minister and the Minister of Transport to the four Western provinces. It is not a comprehensive measure covering transportation.

Senator Argue: I suppose a good deal of it will automatically become public once a more comprehensive bill is passed.

Mr. Soucy: As I say, this is an interim measure aimed at satisfying the commitment the Prime Minister made to the Western provinces in July, 1973. A more comprehensive bill will be introduced to cover all modes of transportation.

Senator Argue: The Railway Act provides that railway companies must keep records of all shareholders, but the number of shares held by each individual shareholder is not public information; whereas under the general corporation law of this country all other corporations have to disclose that information. That is another instance where the railways have been secretive under the law about their operations. I am very much a layman, but I can see no reason why the railways should not make public the number of shares held by each individual shareholder.

Senator Langlois: That would be quite a task in respect of CNR, because the people of Canada are the shareholders.

Senator Argue: Yes, but obviously we are after that information in respect of the CPR.

Senator Riley: Is there not a section in the National Transportation Act which makes reference to the confidentiality section of the Railway Act?

Mr. Soucy: Perhaps I can read section 331 of the Railway Act:

> Where information concerning the costs of a railway company or other information that is by its nature confidential is obtained from the company by the Commission in the course of any investigation under this Act, such information shall not be published or revealed in such a manner as to be available for the use of any other person, unless in the opinion of the Commission such publication is necessary in the public interest.

Senator Riley: That is the Railway Act. Is there not reference to that in the National Transportation Act?

Mr. Soucy: Section 82 of the National Transportation Act deals with the powers of the minister. Under that section the minister has the power to ask railway companies for any information.

Senator Riley: I am talking about the National Transportation Act. This question came up during the Bell hearings. At that time the commission was governed by this confidentiality section of the Railway Act.

Mr. Soucy: When the Canadian Transport Commission is given confidential information concerning railway companies, it is given that information on a confidential basis for the sole use of the commission. That is dealt with under section 331 of the Railway Act.

Senator Riley: This confidentiality section was applied in the Bell hearings. I take it that it would also apply to other utilities which might come under the regulatory power of the CTC.

Mr. Soucy: I am not in a position to answer that question, senator; I am not so familiar with Bell Canada.

Senator Riley: I understand that, but has it been taken into consideration that, if the CTC is governed in respect of railway companies by this confidentiality section, it would also apply to information in respect of telephone companies and other utilities?

Mr. Soucy: I cannot answer that.

Senator Riley: I think it is important.

The Chairman: Are there any further questions?

Senator Smith: You mentioned that this bill came about as a result of the Western Economic Opportunities Conference.

Mr. Soucy: Yes.

Senator Smith: I think I know the answer, but I should like to be sure that this legislation will apply to all provinces of Canada, including the Atlantic region. I take it it will.

Mr. Soucy: It will apply throughout the country, senator.

Senator Smith: One further question. What are the sanctions with respect to railway companies for non-compliance under the terms of the act?

Mr. Soucy: The minister has full power under section 82 of the National Transportation Act now. Paragraph (d) says that the minister can:

> require the production of all material books, papers, plans, specifications, drawings and documents.

The minister has the power. If the railways do not want to comply with the minister's request, the minister has the power. We do not think the railways will not comply, because they are smart businessmen.

Senator Smith: That is true. I would think the railways would have complied with the request for information long before now without having to have an act to compel them to supply it. I may have a false vision, but I can envision that a time might come when the information would not be assumed to be complete, or the kind of information that is useful for making applications to the Canadian Transport Commission. Under those circumstances, what would be the sanctions against a railway company that did not comply fully with the terms of the act? It may be covered in some other act.

Mr. Soucy: If the minister wants to go through the CTC, he gets the information from the railway, but we cannot expect the railway to provide ten more man-years to provide that kind of service to the western provinces and the Canadian Government. That information is available in the CTC in all kinds of detail, because in considering subsidies in connection with uneconomic branch lines and uneconomic passenger train services the CTC has all that information. If the Minister of Transport asks the railways for information and they do not want to give it to him, I guess it is a theoretical question. They know they do not have a choice; it is just like breaking the law not to comply.

Senator Smith: Does what you have just said with regard to information already in the possession of or available to the Canadian Transport Commission apply also to section 331.1, relative to the costs of a railway company in respect of the transportation services and operations of the company? Relative to the costs of the company in moving specified commodities generally or between specified points, that information is assumed now to be in the possession of the Canadian Transport Commission?

Mr. Soucy: Yes.

Senator Forsey: I am still not satisfied about section 331.3(3). It looks to me as if once the minister has released the information to the government of a province, if that government wants to use it in proceedings under the National Transportation Act or the Transport Act there is no specific provision that it must get the permission of the minister. If under section 331.1(2) the minister releases the information to the government of a province and that government has undertaken to treat the information as confidential, that is one thing. Once the province has got the information, it seems to me that under section 331.3(3), if it wants to use it for the purposes of proceedings under the National Transportation Act or the Transport Act, it is apparently released from the requirement of confidentiality. That is the way it looks to me.

Mr. Soucy: No. If the provinces are given information on a confidential basis, then it is confidential and they cannot use it in public hearings.

Senator Forsey: Wait a minute. That is just the point I am getting at. Under the new section 331.3(3) it looks to me as if they do not have to get the permission of the minister. I do not think it is clear at all. I defer to my legal colleagues here. Perhaps it is perfectly clear to them, as apparently it is to you, but it looks to me as if section 331.3(3) lets them out from the requirement of confidentiality. I would be interested to know what any legal gentlemen here think about that, because it bothers me.

Mr. Soucy: In my opinion, the bill, as it is drafted, is supposed to do what I have described to you in theory. It is supposed to do that.

Senator Langlois: It does not do it in this case.

Senator Bourget: When the railways get the costs, would that also include a fairly reasonable return on their investment, and would they also take into account the subsidies they are getting from the government? Will all that information be supplied?

Mr. Soucy: Subsidy payments are based on railway costs.

Senator Bourget: That is public.

Mr. Soucy: The subsidy payment is public information. The way the subsidies are calculated for passenger and branch lines, the cost breakdown in the subsidy payment, is public. Subsidies are calculated from the railway unit costs. The railway unit costs given to the provinces will be the same kind of unit costs as those developed for the Canadian Transport Commission. The commission uses gross to net for investment costs and there is a figure used for return on investment. The provinces will be given the costs, with the knowledge of what is used as a return on investment, whether it is 10, 12 or 13 per cent, or 6, 7 or 8 per cent. They will know that. If they like to play around with it, if the railway gets 10 per cent or 6 per cent on investment, they will be able to manipulate the unit costs.

Senator Bourget: I should like to go back to Senator Argue's question about the shareholders. Can the minister get that kind of information about shareholders? I am not talking about CNR but about CPR. Can he get a list of the shareholders, and could it be transmitted to the provinces?

Mr. Soucy: The minister could be asked for that, and under section 82 of the National Transportation Act the minister has a lot of power. If the minister felt it was in the national interest, then such information would have to be given. The Minister of Transport would have to be asked for it, and he would have to make up his own mind what to do about it.

Senator Argue: Do I understand correctly that when the railways apply to obtain a subsidy, not only do they give some detailed costs as they affect branch lines on which they are asking for a subsidy, but those submissions on the costs are available to the public?

Mr. Soucy: Not the unit costs in themselves. It is acceptable breakdowns, but not the unit costs. What the provinces are interested in is how much it costs per train mile, how much it costs to move a ton one mile. They have a unit cost breakdown, and you can use that basic information and build the total cost. The provinces are interested in the building blocks of railway costs. Right now they can get overall costs through branch lines, but not for the building blocks. They cannot use that information at some other time for some other purpose in policy formulation, because they did not get the building block of these total costs. The act gives power to the Minister of Transport to provide the

four western provinces and the other provinces with the building blocks so that they can do their planning, policy formulation and so on.

Senator Argue: In obtaining the subsidies now on these cost submissions on a rail branch line out in my country, are the costs of the head office, administration let us say, including the salary of the president, apportioned to this poor little branch line which is having a difficult time to survive?

Mr. Soucy: When the railways file for subsidies on branch lines, the subsidies are calculated by taking the revenue from the branch line, minus its full costs in the branch line itself, minus the variable costs of moving the carload on the main line. This results in a deficit, which becomes the subsidy. With respect to the costs, mathematical models are used and these include regressions. It is possible that a few pennies of the president's salary would go on the branch line. It is very technically oriented. Overhead and administrative expenses at the headquarters are spread throughout the system, inasmuch as it is variable with traffic. If, for example, it is found that it is not a variable but a fixed cost, it will not be billed back to the branch line.

The Chairman: Are there further questions? Is it your wish to deal with the bill clause by clause?

Senator Burchill: I move that the bill be reported without amendment.

The Chairman: It is moved by Senator Burchill, seconded by Senator Langlois, that this bill be reported to the Senate without amendmemt. All in favour? Opposed? Carried.

Thank you very much, Mr. Soucy; you have explained it very well.

The committee continued *in camera.*

Published under authority of the Senate by the Queen's Printer for Canada

Available from Information Canada, Ottawa, Canada

LIBRARY
UNIVERSITY
CAI YC 19
-T83
Government Publications

FIRST SESSION—THIRTIETH PARLIAMENT
1974-75

THE SENATE OF CANADA

PROCEEDINGS OF THE

STANDING SENATE COMMITTEE ON

TRANSPORT AND COMMUNICATIONS

The Honourable MAURICE BOURGET, *Deputy Chairman*

Issue No. 8

WEDNESDAY, MAY 21, 1975

Third and Final Proceedings on Bill S-5, intituled:

"An Act to enable Canada to comply with a Convention on the International Recognition of Rights in Aircraft"

REPORT OF THE COMMITTEE

(Appendix: See Minutes of Proceedings)

28778—1

STANDING SENATE COMMITTEE ON
TRANSPORT AND COMMUNICATIONS

The Honourable J. Campbell Haig, *Chairman*

The Honourable Maurice Bourget, *Deputy Chairman*

The Honourable Senators:

Blois	Lawson
Bourget	McElman
Burchill	Molgat
Davey	O'Leary
Denis	*Perrault
Eudes	Petten
*Flynn	Prowse
Forsey	Riley
Graham	Smith
Haig	Sparrow
Langlois	Welch—(20)

(Quorum 5)

**Ex officio members*

Order of Reference

Extract from the Minutes of the Proceedings of the Senate, October 23, 1974:

"Pursuant to the Order of the Day, the Honourable Senator Giguère moved, seconded by the Honourable Senator Fergusson, that the Bill S-5, intituled: "An Act to enable Canada to comply with a Convention on the International Recognition of Rights in Aircraft", be read the second time.

After debate, and—
The question being put on the motion, it was—
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Giguère moved, seconded by the Honourable Senator Fergusson, that the Bill be referred to the Standing Senate Committee on Transport and Communications.

The question being put on the motion, it was—
Resolved in the affirmative."

Robert Fortier,
Clerk of the Senate.

Minutes of Proceedings

Wednesday, May 21, 1975.

Pursuant to adjournment and notice, the Standing Senate Committee on Transport and Communications met this day at 5.00 p.m. to consider Bill S-5, "An Act to enable Canada to comply with a Convention on the International Recognition of Rights in Aircraft".

Present: The Honourable Senators Bourget (*Deputy Chairman*), Burchill, Denis, Eudes, Flynn, Graham, Langlois, McElman, Molgat, Petten, Prowse and Riley. (12)

In Attendance: Mr. R. L. du Plessis, Legal Adviser to the Committee.

The Committee proceeded to the consideration of the Report of the Steering Committee.

It was moved by the Honourable Senator Burchill that the correspondence exchanged between the Committee and the provincial Attorneys General, including letters and telegrams, be printed as Appendix "A" to these Proceedings. The motion was *carried*.

After discussion, it was *Agreed* that the Report of the Steering Committee met with the approval of the Committee.

After discussion and upon motion of the Honourable Senator Riley, it was *Resolved* to adopt the Report of the Committee which recommends that the said Bill not be proceeded with further in the Senate for the reasons set forth therein.

At 6.10 p.m. the Committee adjourned to the call of the Chairman.

ATTEST:

Aline Pritchard,
Clerk of the Committee.

Report of the Committee

Wednesday, May 21, 1975

The Standing Senate Committee on Transport and Communications to which was referred the Bill S-5, intituled: "An Act to enable Canada to comply with a Convention on the International Recognition of Rights in Aircraft", has in obedience to the order of reference of October 23rd, 1974, examined the said Bill and now reports as follows:—

Your Committee recommends that this Bill be not proceeded with further in the Senate for the following reason:

> This Bill, which would establish in Canada a central aircraft registry, deals with the protection of certain property rights and other interests in aircraft and, in the considered view of your Committee, its enactment by the Parliament of Canada would, in the absence of a clear judicial determination of its constitutionality, give rise to considerable uncertainty as to whether or not the matters to which it extends come within a class of subject over which the Parliament of Canada has exclusive jurisdiction.

Your Committee further reports that in the course of its consideration of the constitutional aspects of this Bill, a letter from the Chairman was sent to each of the provincial attorneys-general to solicit their views on the proposed legislation. In replying to the letter, the provinces expressed concern over the constitutional problems the Bill would create in the absence of clearly valid complementary federal and provincial legislation. The provinces, as well as the witnesses heard by your Committee, expressed the view that the Bill, if enacted, would result in confusion, unless some effort were made in consultation with the provinces to resolve in advance potential conflicts with existing provincial statutes relating to property rights and mortgages.

Respectfully submitted.

Maurice Bourget,
Deputy Chairman.

Evidence

Ottawa, Wednesday, May 21, 1975

The Standing Senate Committee on Transport and Communications, to which was referred Bill S-5, to enable Canada to comply with a Convention on the International Recognition of Rights in Aircraft, met this day at 5 p.m. to give consideration to the bill.

Senator Maurice Bourget (*Deputy Chairman*) in the Chair.

The Deputy Chairman: Honourable senators, the first item on the agenda this afternoon is Bill S-5, to enable Canada to comply with a Convention on the International Recognition of Rights in Aircraft.

The committee at the last meeting authorized a steering committee to make a study in connection with Bill S-5 and to report back to the whole committee. All honourable senators have now been provided with a draft of the recommendation made by the steering committee.

Are there any comments in connection with the draft which has been prepared by Mr. du Plessis on the recommendation of the steering committee?

Senator Riley: Is the procedure correct?

Senator Langlois: There are many precedents for it.

The Deputy Chairman: I have been advised by Mr. du Plessis that the procedure is a correct one. As far as the draft is concerned, I should like to have an expression of the views of the committee.

Senator Flynn: I think it reflects the views members of the committee have expressed in previous meetings.

Senator McElman: I agree with it.

Senator Riley: I see nothing wrong with it.

The Deputy Chairman: Senator Hayden appeared before the steering committee and introduced an amendment. Not being a lawyer, I cannot comment on the amendment from a legal point of view. Perhaps Senator Flynn can explain the amendment proposed by Senator Hayden.

Senator Flynn: Senator Hayden assumed that there was no doubt about the constitutionality regarding the provinces in this area, and he was endeavouring to correct the bill in order to make the processes conform with the existing legislation. To my mind, the amendment does not dispose of the confusion that would result between the new federal legislation coming into force and the existing provincial legislation remaining. I do not believe Senator Hayden disputed that.

His suggestion might be something for the Ministry of Transport and the Department of Justice to consider, but it is not a suggestion which the committee should adopt as there would still remain a great deal of uncertainty.

Senator Burchill: In other words, there has to be complementary federal and provincial legislation?

Senator Flynn: The ideal situation would be to have it finally decided by the Supreme Court or by agreement between the federal and provincial governments that the federal Parliament has authority over property and civil rights in aircraft in the same way as it has authority over ships. We could then have the provinces withdraw from this area as of a certain date, and from that date onwards the federal legislation would apply. That would be the ideal solution.

Senator Burchill: Would there have to be provincial legislation?

Senator Flynn: No, there would be no need for provincial legislation. However, there would still be some questions remaining, such as whether aircraft engines would come under federal jurisdiction.

Senator Langlois: I have been advised that if aircraft engines are dealt with separately, a great many problems will be created. These engines are not only used to propel aircraft; they are used extensively, for example, to provide the pressure needed in pipelines. As far as the engines are concerned, they would come under provincial jurisdiction. There is strong objection to including the engines separately.

Senator Flynn: Aircraft engines or parts.

Senator Langlois: Yes.

The Deputy Chairman: I think I can say that most, if not all, of the provincial attorneys general have stated in the correspondence that they accept the objective of the bill in having a central registry. They feel such a registry would be of great benefit. On the other hand, they do say it would not be constitutional. For that reason, members of the steering committee, having studied the correspondence from the provinces, thought that it would be better not to proceed with the bill, but to send it back to the other place so that the department concerned can contact the provinces in an effort to arrive at some kind of an agreement which would meet the wishes of all interested parties.

We are all aware that financial institutions, particularly, which are involved in loans, hypothecs or mortgages with the aircraft companies are anxious to get this bill passed so that Canada is in a position to sign the Convention on the International Recognition of Rights in Aircraft. However, to pass it in its present form would create more confusion. For that reason, we feel it should not be proceeded with in its present form.

Senator Flynn: One approach might be to have a central registry in each province to enable the provinces to conform with the Convention, with the provinces agreeing that there should be one central federal registry where all

provincial registrations could be transferred for the information of all concerned.

The Deputy Chairman: As a matter of fact, that suggestion was contained in the letter from the Province of Quebec.

I cannot remember the contents of all the letters from the provinces, but I think they are willing to co-operate. We feel it is now up to the government to try to reach some kind of agreement with them.

Senator Flynn: I found it surprising that the legal advisor to the Ministry of Transport admitted that they had not consulted the provinces before bringing this legislation down.

Senator Langlois: Mr. Chairman, at least one of the witnesses who appeared before this committee made the statement that this bill would merely create a central registry. The bill goes much further than that. Clause 9 of the bill deals with seizure and sale of aircraft, and clause 10 deals with the execution proceedings. In that sense, it goes beyond the federal jurisdiction, to my mind, and into the area of provincial jurisdiction. Because of that, I think we should be very careful in our consideration of the bill.

The only way to deal with it in a safe manner, to my mind, is to send it back to the other place for a second look, with the suggestion that the Minister of Transport discuss it with the provinces.

We are not going that far in our report. We are merely sending it back for further consideration. However, when the minutes of our proceedings in connection with Bill S-5 are read, as well as the correspondence which will be attached to our proceedings, the government should see the light and consult with the provinces to find ways and means of dealing with this matter.

Senator Prowse: There is a whole area of conflict which should be cleared up before we proceed with this legislation.

The Deputy Chairman: Senator Langlois, in making the comments you have made, have you taken into account the suggestion made by Senator Hayden when he appeared before the steering committee?

Senator Langlois: Yes.

The Deputy Chairman: As you know, I am not a lawyer. Nevertheless, what you say makes sense. In terms of the legalities, I am somewhat at a loss.

Senator Langlois: I think we should make sure we include everything that was put before the committee. For example, you have referred to the suggestion made by Senator Hayden before the steering committee. That was not made to the committee as a whole, and will not be included in the record unless at this meeting we take cognizance of it and decide, by way of a motion, to make it an appendix the report of these proceedings. The same thing should be done with the letters received from the various provincial attorneys general.

The Deputy Chairman: If it is the wish of the committee, I could have Mrs. Pritchard read Senator Hayden's proposed amendment.

Senator Langlois: If it is read into the record, it will become part of our proceedings.

The Clerk of the Committee: It is in draft form, and reads as follows:

DRAFT OF PROPOSED AMENDMENT TO THE AERONAUTICS ACT TO BE INCLUDED IN BILL S-5

6.1 Any contract evidencing the lease, conditional sale, hypothec or mortgage of an aircraft, registered in Canada, an aircraft engine or either of them shall be in writing, duly executed by the parties thereto, and the same or a copy thereof may be registered pursuant to the Aircraft Registry Act and the interests created by any such contract so registered are, subject to the provisions of the Aircraft Registry Act, valid against any person.

Senator Flynn: You can skip the paragraphs numbered 1, 2 and 3 and go right to the paragraph commencing, "The particular section . . .".

Mrs. Pritchard: It continues:

> The particular section of S-5 with which we should be concerned is Section 17, which is a transition section. This section is necessary in order that mortgages, hypothecs, conditional sales, etc. registered provincially may be valid, notwithstanding the provisions of this Bill and the amendment to the Aeronautics Act. However, there should be a time limit within which any such holder would be required to register in the Central Aircraft Registry in order to maintain the validity of his security. It has been suggested that possibly a year would be sufficient for this purpose.
>
> Secondly, there should be another amendment to Section 17 to deal with the Quebec situation where I understand a security of the nature of a chattel mortgage, etc., may be created and be effective without registration. This should be made a specific exception and its validity should be, although not registered anywhere, recognized and the same time limit should apply, requiring registration of such instrument on the Central Aircraft Registry.

That completes it.

Senator Flynn: The explanation verifies what I said about the proposal of Senator Hayden's not solving all the problems. He recites a certain number of problems that will have to be dealt with eventually. We would have to redraft the whole bill, and even at that we may not overcome all of the problems.

Senator Prowse: The solution, then, is simply to send the bill back.

Senator Flynn: Yes, that is right.

Senator Prowse: Why, then, are we going through all of this?

Senator Flynn: We want to have everything on the record for the information of the department.

Senator Langlois: It should be added that when Senator Hayden appeared before the steering committee he made it quite clear that his was not a perfect solution.

The Chairman: Senator Hayden has merely made an attempt at a solution. To be fair to Senator Hayden, he is my desk-mate and I discussed this matter with him and he very kindly offered to take a look at it to see whether or not he could come up with a solution. Even with that kind of amendment, it does not solve all of the problems.

Senator Burchill: Mr. Chairman, I move that the correspondence exchanged between the committee and the provincial attorneys general, including letters and telegrams, as well as the report of the steering committee, be printed as an appendix to the record of today's meeting.

The Chairman: Does the draft of the report of the steering committee prepared by Mr. du Plessis meet with the approval of the committee?

Hon. Senators: Agreed.

The Chairman: Is it agreed that we adopt Senator Burchill's motion to have all of the correspondence and the report printed as an appendix "A" to today's record?

Hon. Senators: Agreed.

(For text of documents see Appendix A.)

Senator Riley: Mr. Chairman, I move the adoption of the report.

The Chairman: Is it agreed, honourable senators?

Hon. Senators: Agreed.

The Chairman: That completes the committee's consideration of Bill S-5.

The Committee adjourned.

APPENDIX "A"

AIRCRAFT REGISTRY BILL

CORRESPONDENCE EXCHANGED BETWEEN THE STANDING SENATE COMMITTEE ON TRANSPORT AND COMMUNICATIONS AND THE ATTORNEYS GENERAL OF THE PROVINCES AND CERTAIN FEDERAL DEPARTMENTS

November 12, 1974

The Honourable C. Mervin Leitch, Q.C.,
Attorney General of Alberta,
Madison Building,
9919-105 Street,
Edmonton, Alberta.
T5K 1B1
Dear Mr. Leitch:

RE: Bill S-5 "An Act to enable Canada to comply with a Convention on the International Recognition of Rights in Aircraft".

The Senate has referred the above bill to the Standing Senate Committee on Transport and Communications. The following documents relate to the legislation in question:

1. Bill S-5 "An Act to enable Canada to comply with a Convention on the International Recognition of Rights in Aircraft".
2. First proceedings on Bill S-5, dated October 31, 1974.
3. Copy of submission by the Federated Council of Sales Finance Companies.
4. Supporting statement respecting the above brief.

From a perusal of the enclosed documents you will see that members of the Standing Senate Committee on Transport and Communications were concerned about several aspects of the bill under consideration. This concern was prompted by the facts that

(a) the bill is being considered in the first instance by the Senate, and that

(b) according to the evidence, there has been as yet no official consultation with the provincial governments on the matter.

The Department of Justice has expressed the view that the bill in its entirety is within the legislative competence of the Parliament of Canada. Nevertheless, the field of protection of proprietary and other interests in aircraft is now evidently occupied in large measure by provincial laws and it was feared that there might arise some confusion and uncertainty in this area, at least in the absence of a clear judicial determination as to the constitutionality of the bill and in the absence of any reaction to the bill from the provinces.

I have, accordingly, been requested by the committee to solicit your views on the foregoing matters.

Hoping for an early response, I am

Yours sincerely,

J. Campbell Haig,
Chairman,
Standing Senate Committee on
Transport and Communications.

The Honourable J. Campbell Haig, Q.C.
Chairman,
Standing Senate Committee on Transport and Communications,
The Senate,
OTTAWA, Ontario.
K1A 0A4

December 17, 1974

RE: Bill S-5 "An Act to enable Canada to comply with a Convention on the International Recognition of Rights in Aircraft"

Dear Senator Haig:

In further response to your letter of November 12, 1974, the various documents which were provided along with a copy of the above bill clearly establish the need and desirability for some type of central registry system for property interests in aircraft. However, I do have some doubt as to the constitutional validity of the bill.

Admittedly there has been no definitive judicial determination concerning the matter in question, but the bill unquestionably deals with property rights in their most basic sense in that it provides for their protection, as well as defining the parameters and extent of such rights. As the bill, particularly in light of Section 17, purports to supersede all present provincial legislation which provides for the protection of property rights insofar as they relate to aircraft and may, apparently alter common law rules relating to the rights of repairmen, it attempts to set up a complete code of property interests relating to this subject matter.

As such, my reaction, as a result of some research and thought on the matter, is that such legislation is properly within the legislative competence of the various provinces. While certain provinces already have central registry systems for interests in chattels which are defined in the various provincial personal property security statutes sufficiently broadly to include aircraft in Manitoba, our Personal Properties Security Act (SM. 1973, c.5) has not yet been proclaimed. Certainly, the implementation of such legislation by all the provinces might provide an effective means of protecting security interests in aircraft.

I thank you for soliciting my minister's views on this matter.

Yours truly,

Gordon E. Pilkey,
Deputy Attorney-General,
Province of Manitoba.

January 14, 1975

Mr. J. Campbell Haig
Chairman
Standing Senate Committee on
Transport and Communications
The Senate
Ottawa, Ontario
K1A 0A4

RE: Bill S-5 "An Act to enable Canada to comply with a Convention on the International Recognition of Rights in Aircraft"

Dear Mr. Haig:

I have had an opportunity to review the material enclosed with your letter of November 12, 1974, in relation to the above bill.

As you point out, aside from the constitutional problem (which in my view is a very real one) there would appear to be potential conflict with existing provincial laws. A number of provincial statutes of general application, as well as the rules of civil procedure in this Province deal with proprietary rights in chattels, and methods of protecting and enforcing those rights.

While the proposed legislation may be desirable, it seems to me that confusion and uncertainty will be the inevitable result unless some effort is made, in consultation with the provinces, to resolve these conflicts, many of which are referred to in the evidence of the Senate committee proceedings enclosed with your letter. Even if the provinces were to enact legislation excluding aircraft from those statutes of general application which relate to property rights in chattels, it seems to me that the constitutional problem still remains.

Neither I nor officials of my Department have had an opportunity to make a thorough examination of the constitutional question. However, it does seem to us that certain portions of the proposed Act relate to property and civil rights and civil procedures, and not to earial transportation. Section 10 in particular, on the face of it, seems to fall within those classes of subjects reserved to the provincial legislatures by Section 92 (13) and (14) of the British North America Act. Even if, after more thorough research, the Provincial Attorneys General were to agree with the view apparently expressed by the Department of Justice on the constitutional problem, members of the private sector who are affected could challenge the legislation, so that uncertainty would continue until there has been a judicial pronouncement.

My department would be pleased to consult further on this problem with other provincial and federal officials.

Yours very truly,

Allan E. Sullivan,
Attorney General,
Province of Nova Scotia.

Quebec City, Quebec,
January 25, 1975.

Senator J. Campbell Haig,
Chairman of the Standing Senate Committee
on Transport and Communications,
The Senate,
Government of Canada,
Ottawa, Ontario.
K1A 0A4
Dear Sir:

The Office of the minister has forwarded to us your letter of last November 21, concerning Bill S-5 "An Act to enable Canada to comply with a Convention on the International Recognition of Rights in Aircraft".

It seems that the Department of Justice cannot reasonably take a final stand regarding Bill S-5 as long as the government has not brought down the amendments it apparently wants to introduce.

On the other hand, it is certain that the Government of Quebec wishes to retain full jurisdiction on the registration of all movables. Indeed, it is emphasized in the brief submitted by lending institutions that they will cautiously keep on recording such rights in each province in addition to doing so with the central registry.

Thus, it might be desirable that the federal act provide for a mechanism that would recognize the validity of registrations made in each province, of which the Federal Department of Transport would have received a copy.

Such exchange of documents should obviously be charged to the central registry. It goes without saying that the proposed mechanism requires prior consultation with the various registrars of the provinces.

Yours truly,

André Gélinas,
Research Director.

(*Copy of telegram sent to Provincial Attorneys General*)

February 21, 1975

Pursuant to previous letters re Bill S-5, your views urgently required by committee to complete consideration of above bill. Please forward reply March 1, 1975, latest.

Maurice Bourget,
Deputy Chairman,
Standing Senate Committee on
Transport and Communications.

(*Telex*)

February 24, 1975.

The Honourable Maurice Bourget,
Deputy Chairman,
Standing Senate Committee on
Transport and Communications,
The Senate,
Ottawa, Ontario.
Dear Sir:

The examination of the implications of Bill S-5 as they affect the Province of New Brunswick has required careful consideration by this office. After serious deliberation on

the matter it is felt that this province cannot agree to simply abandon its jurisdiction over aircraft which are chattels and fall within the legislative jurisdiction of this province.

The proper method of creating and implementing the scheme proposed by Bill S-5 would be by means of federal/provincial agreements supported by compatible federal legislation based thereon rather than the federal government's simply assuming a jurisdiction which it is sumbitted it does not have thereby further confusing the situation which Bill S-5 presumes to clarify. While it is accepted that the idea of Bill S-5 is basically sound and that federal legislation is necessary to implement the international convention, it is the means of implementation without clear guarantees of provincial rights in aircraft as chattels to which this province objects.

It is urged by the Province of New Brunswick that the method above suggested for the implementation of the scheme proposed by Bill S-5 be carried out. Otherwise, those having 'interest' in aircraft will be in no clearer position if Bill S-5 were to be passed with the ever present possibility of constitutional challenge from the provinces. Interest holders will simply have to register in one more registry office with no more certainty of protection thereunder than under the current practice.

it is hoped these suggestions will be considered by the committee in deliberations on Bill S-5 in furtherance of good federal-provincial relations and in light of this province's real concern for the constitutional issues involved.

Yours truly,

Paul S. Creaghan
Minister
Department of Justice
Fredericton, N.B.
E3B 5H1

(*Telex*)

February 27, 1975.

Mr. Maurice Bourget,
Deputy Chairman,
Standing Senate Committee on Transport
and Communications.
Ottawa, Ontario.

Further to your correspondence regarding Bill S-5, this will advise that Saskatchewan is not in agreement with the opinion of the federal Department of Justice that Bill S-5 falls entirely within the legislative competence of the Parliament of Canada. It is our view that the bill in many respects involves matters reserved by the British North America Act to the provinces as being in relation to property and civil rights in the province. In addition Saskatchewan is concerned that the establishment of a central registry system limited to aircraft could create more legal and administrative problems than it resolves. Accordingly it is our position that consultation with the provinces rather than legislation is indicated at this time.

Roy J. Romanow,
Attorney General,
Province of Saskatchewan.

(*Telegram*)

February 23, 1975

Maurice Bourget,
Deputy Chairman,
Standing Senate Committee on
Transport and Communications,
The Senate,
Ottawa, Canada.

Further to letter of November 12, 1974, of J. Campbell Haig to Merv Leitch, Attorney General, Alberta's view is that bill S-5 is largely legislation affecting property and civil rights and within provincial jurisdiction. We concur in the views of the Province of Manitoba as set out in the letter of December 17, 1974, of G. Pilkey, Deputy Attorney General, Manitoba.

Acting Deputy Attorney General
For Alberta.

February 27, 1975

The Honourable J. Campbell Haig,
Chairman,
Standing Senate Committee on
Transport and Communications,
Ottawa, Ontario.
Dear Senator Haig:

On behalf of the Attorney-General for British Columbia I wish to enclose the text of the Telex sent to you on February 27, 1975, in which British Columbia's views on Bill S-5, as requested, were embodied.

Thank you once again for your consideration in waiting for the reply.

Yours very truly,

Norman J. Prelypchan,
Solicitor,
Attorney General's Department,
Province of British Columbia.

(*Telex*)

February 27, 1975

The Honourable J. Campbell Haig,
Chairman, Standing Senate Committee on
Transport and Communications,
Ottawa, Ontario.
British Columbia's Reply to the Senate of Canada Standing Committee on Transport and Communications—Request For Comments on Bill S-5

It is respectfully submitted that in its consideration of Bill S-5, the Senate Standing Committee on Transport and Communications consider the following views of the Province of British Columbia.

Constitutional Considerations

1. Legislation relating to the registration of financial interests in aircraft is clearly within provincial jurisdiction under the provisions of Section 91(13) of the B.N.A. Act (property and civil rights).

2. The proposed federal legislation is seen as going beyond the jurisdiction of the Parliament of Canada, as the dominant aspect and effect of the legislation relates to property and civil rights. The proposed legislation would

not merely touch on some aspects of exclusive provincial jurisdiction in an ancillary manner, but would rather effectively and primarily deal with property and civil rights, under the guise of aeronautics legislation.

3. That if the federal bill is enacted and the suggestions that applicable provincial legislation be repealed are accepted, existing property rights derived from valid provincial legislation would appear to be abdicated in favour of Ottawa.

Practical Considerations

1. British Columbia has established and presently maintains a central registry for the filing of security interests in chattels. The registry system embraces security interests in aircraft. The procedure can be found to exist in the Conditional Sales Act, the Bills of Sale Act, and the Companies Act.

2. The Mechanics' Lien Act of the province deals specifically with protecting the security of workmen and suppliers who have expended labour and materials on the repair of aircraft.

3. Some of the submissions advocate somewhat of a self-interested and convenience-oriented position.

4. The federal scheme would deprice the provincial resident of the convenience of the existing system of registration. Presumably he would need to retain an Ottawa agent to effect searches, etc. The establishment of a federal regional office in the province would only serve to replace the existing system with a similar one.

5. Existing provincial legislation makes mandatory the registration of security interests thereby establishing recognized priorities. The proposed federal legislation in favour of a less desirable system would provide only information to those interested with the ranking of priorities only effective between the parties who had registered.

6. The passage of the federal legislation would result in a duplicity of registries in respect of those provinces, such as British Columbia, which would not wish to remove the application of its registry system to aircraft.

7. The proposed federal legislation may disentitle owners of aircraft in the Province from the extensive benefits of the "seize or sue" legislation, presently existing.

Summary

Leaving aside the constitutional issues, the practical benefits to be derived from such legislation, that is, the claim of greater protection for the financial institutions, reduced cost of financing to the borrower, and the practically enforced compliance to a registration system in jurisdictions not presently enjoying one, may have merit. Those benefits, though attractive in the abstract, do not arise, solely from the concept of the suggested single registry in Ottawa.

Although British Columbia is opposed to recommending this proposed legislation it should not be taken as rejecting other alternatives which may be explored to derive similarly practical results. The establishment of central registries in all the provinces could be urged forthwith, through the medium of the Uniformity Commissioners recommending the enactment of reciprocally compatible legislation by the provinces, without a compromise of constitutional jurisdictions and local interests.

Respectfully submitted,

The Attorney-General for the Province of British Columbia.

February 28, 1975.

Mr. Maurice Bourget,
Deputy Chairman,
Standing Senate Committee on
Transport and Communications,
The Senate,
Ottawa, Ontario,
K1A 0A4

RE: Bill S-5 "An Act to enable Canada to comply with a Convention on the International Recognition of Rights in Aircraft".

Dear Mr. Bourget:

Further to my letter dated January 31, 1975, to the Honourable J. Campbell Haig, this is to further advise you that this province feels that an authorization for seizure of an aircraft should be made to the Supreme Court of the province and not to the Federal Court of Canada. This province is concerned about the progressively expanding jurisdiction of the Federal Court of Canada.

Yours sincerely,

T. Alex Hickman,
Minister of Justice,
Government of Newfoundland.

January 31, 1975

The Honourable J. Campbell Haig, Chairman,
Standing Senate Committee on
Transport and Communications,
The Senate,
Ottawa, Ontario, K1A 0A4.

RE: Bill S-5 "An Act to enable Canada to comply with a Convention on the International Recognition of Rights in Aircraft".

Dear Senator Haig:

Thank you for your letter and enclosed documentation of November 12 relating to the above-noted bill. As the proceedings before your committee revealed there was no official consultation with our province on this matter.

It is the opinion of the Province of Newfoundland and Labrador that the proposed bill deals primarily with property rights and therefore the Parliament of Canada lacks jurisdiction in this matter. Our province in cerainly not willing to ignore the constitutional implications of the bill because of the practical benefits that would be afforded to financial institutions.

If the bill is passed in its present form, uncertainty in this area will continue in the absence of a clear judicial decision and the Province of Newfoundland may therefore

have to refer this matter to the courts for judicial determination.

Yours sincerely,

T. Alex Hickman, C.R.,
Minister of Justice,
Government of Newfoundland.

February 28, 1975.

(*Letter addressed to Attorneys General of all Provinces*)

February 28, 1975.

Please find enclosed herewith copies of the replies received, to date, by the Chairman of the Standing Senate Committee on Transport and Communications, to his two previous letters to the Attorneys General of each of the provinces requesting their views regarding Bill S-5 "An Act to enable to comply with a Convention on the International Recognition of Rights in Aircraft".

As Deputy Chairman of the Committee, I have been authorized by the committee to forward this correspondence to you for your information.

It is the wish of the committee to proceed with its study of above bill as soon as possible and, to this end, a committee meeting is being arranged for the early part of March.

Yours sincerely,

Maurice Bourget,
Deputy Chairman,
Standing Senate Committee on
Transport and Communications.

March 3, 1975.

The Honourable J. Campbell Haig, Q.C.
Chairman, Standing Senate Committee on
Transport and Communications
The Senate
Ottawa, Ontario
K1A 0A4

RE: Bill S-5—An Act to enable Canada to comply with a Convention on International Recognition of Rights in Aircraft.

Dear Senator Haig:

The Premmier and Attorney-General, the Honourable Alexander B. Campbell has requested that I reply to your letter of November 12, 1974 concerning the above captioned matter.

I have examined the materials enclosed with your letter and researched the problem posed by Bill S-5. After discussing the matter with the Deputy Attorney General, it is our opinion that Bill S-5 is related to the property and civil rights, a field assigned by the B.N.A. Act to the provinces. As such the matter should be thoroughly discussed with the provinces before any legislation passed.

I thank you for soliciting my minister's views on Bill S-5 and the Department of the Attorney General would be pleased to consult with federal and provincial officials on this matter.

Yours truly,

Arthur J. Currie,
Departmental Solicitor,
Department of Justice,
and Attorney General,
Province of Prince Edward Island.

February 24, 1975

(*Telegram*)
Maurice Bourget, Deputy Chairman,
Standing Senate Committee on
Transport and Communications,
Ottawa, Ontario.

Provincial government views will be expressed directly to the Government of Canada and therefore I anticipate making no personal submissions before your committee.

John T. Clement,
Attorney General of Ontario.

April 4, 1975

The Honourable Maurice Bourget,
Deputy Chairman,
Standing Senate Committee on
Transport and Communications,
The Senate,
OTTAWA, Ontario.
K1A 0A4.
Dear Senator Bourget:

The Attorney General, the Honourable John T. Clement, has requested that I reply to your letter of February 28th, enclosing correspondence and referring to Senator Haig's earlier letter with respect to Bill S-5 "An Act to enable Canada to comply with a Convention on the International Recognition of Rights in Aircraft".

I fully appreciate the desirability of the objective of Bill S-5 to establish in each country a single internationally recognized central registry for the recording of all interests in aircraft of the nationality of the country. It would give protection to Canadian interests and convenience and certainty to commercial transactions relating to aircraft. In accordance with this view, my comments are put forward in a cooperative spirit. However, an examination of the bill has lead me to the conclusion that, in its present form, it will not accomplish this objective and will be attended by unnecessary legal problems. Two main aspects of the bill concern me.

In my view, the bill in its present form is at least in part of doubtful constitutional validity. Its validity would appear to be intended to rest on Parliament's authority to legislate in relation to aeronautics and aerial transportation and to legislate for the purpose of implementing an International Convention. The scope of the authority of Parliament in relation to both of these matters is not clearly defined. Certain provisions of the bill would seem to go beyond either of them even if the most favourable view is taken of Parliament's authority and to relate to matters of provincial competence. For example, the bill abrogates the rights of a creditor to seize under provincial law a non-commercial Canadian aircraft in the exercise of a contractual right to enforce a security interest acquired under such law if the security interest is unrecorded in the

central registry, although no person other than the debtor and creditor has any claim with respect to the aircraft (cl.8(b)). Such a provision does not appear to be required by the terms of the Convention (Art. 1, para. 2) nor does it seem to be legislation in relation to aeronautics or aerial transportation, but seems to be legislation strictly in relation to property and civil rights in the province. The validity of this and other more significant provisions of the bill can only be finally settled by the courts and until this is done, will remain uncertain.

Again, the provisions of the bill do not seem to have been prepared with sufficient thought given to integrating them with existing provincial laws. In some provinces, statutes require registration under them to give validity to security claims over chattels as against third parties. It would appear that the validity of an interest recorded in the central record is to be determined in part under provincial law. What is the position of an unregistered but recorded interest? Also, the transitional clause (cl.17) leaves the operation of provincial laws with respect to securities given before the coming into force of Bill S-5 uncertain and indefinite as to the period during which they will operate. Other examples are given in the submissions already made to your committee.

Until all these uncertainties are resolved, I suggest that the objective Bill S-5 will be substantially defeated since lenders desiring to ensure protection for security interests in aircraft will probably find it necessary to comply with both provincial laws and Bill S-5. Even then their rights will not be clear until the extent to which the bill overrides provincial law is established. I am sure no one will contend that the existence of such uncertainties in a field where significant commercial transactions must be founded on certainty of the law can be justified.

I have given some thought to the ways in which these uncertainties could be eliminated.

I do not think that a reference to the bill to the courts would be of assistance. The question of its validity arises with respect to several of the provisions of the bill and raises many questions that it would be undesirable to deal with in the abstract. Moreover, it would not, I suggest, be possible to refer questions to the courts that would settle the operation of the provisions of the bill in all of the 10 provinces.

For these reasons, I would respectfully suggest that Bill S-5 should not be proceeded with until after a consultation between the appropriate federal and provincial ministries has taken place. The bill might be revised to establish a scheme enacted by clearly valid complementary federal and provincial legislation. Its terms could also be revised to clarify and make certain the effect of recording in the new central record under the law of each province.

I should also add that I feel that it is undesirable from the point of view of cost and delay to confer discretionary jurisdiction on the Federal Court to regulate seizures of aircraft operating on scheduled air services where a judgment of a superior provincial court authorizing such seizure has already been obtained. Any special considerations governing the seizure of such aircraft should be written into the bill and could be applied in the provincial courts. This new extension of the already over-extended jurisdiction of the Federal Court is unnecessary.

I thank you for soliciting the views of this ministry on this matter.

Yours Truly,

F. W. Callaghan,
Deputy Attorney General,
Province of Ontario.

February 21, 1975.

Mr. F. E. Gibson,
Director, Legislation Section,
Department of Justice,
OTTAWA, Ontario
Dear Mr. Gibson:

The Standing Senate Committee on Transport and Communications is presently considering Bill S-5, "An Act to enable Canada to comply with a Convention on the International Recognition of Rights in Aircraft". Some time ago I was instructed to seek the views of the provincial Attorneys General on said bill. To date, the three attached replies to our queries have been received.

This morning the committee instructed me to renew our request to the Attorneys General, forwarding at the same time copies of the replies already received. I was also instructed to acquaint you with these developments and to seek your advice as to the possibility of our committee amending the legislation without violating the terms of the treaty which it seeks to implement.

I should like to hear from you as to your availability to so advise our committee, either by appearing before it or submitting a written opinion. Your advice should also deal with the constitutionality aspect of the said bill.

Thanking you for your kind attention to my request, I remain,

Yours truly,

Maurice Bourget,
Deputy Chairman.

March 5, 1975

Senator Maurice Bourget
Deputy Chairman
Senate Committee on Transport and Communications
The Senate
Parliament Buildings
Ottawa, Ontario
K1A 0A4

RE: Bill S-5 And Act to enable Canada to comply with a Convention on the International Recognition of Rights in Aircraft

Dear Senator Bourget:

In your letter of February 21, 1975 to Mr. F. E. Gibson, Director, Legislation Section, you inquired as to the possibility of the Committee on Transport and Communications amending Bill S-5 without violating the terms of the Convention on the International Recognition of Rights in Aircraft signed at Geneva on the 19th day of June, 1948. You

also requested a reply providing an opinion as to the *constitutional aspect of the bill*, i.e., an opinion on the authority of Parliament to enact legislation to give effect to the Convention.

With respect to your inquiry as to the possibility of amending the bill without violating the terms of the Convention, there are undoubtedly amendments that could be made without violating its terms but each of these would have to be considered in light of the Convention. It is, in the circumstances, impossible to advise you in a specific manner without knowing the nature and scope of the proposed amendments.

The bill is based on the federal power in respect of aeronautics which arises from two well known judicial decisions. The first is the decision of the Privy Council, *in re* The Regulation and Control of Aeronautics in Canada, (1932) A.C.54. The second is the decision of the Supreme Court of Canada in *Johanneson vs the Rural Municipality of West St. Paul* (1952) 1. S.C.R. 292.

As an officer of the Department of Justice and a legal adviser to the Government I am unable to give you an opinion on constitutional aspects to which you refer. Such a request should be addressed to the Minister responsible for the bill.

Yours very truly,

M. H. Pepper,
Department of Justice.

Senator Maurice Bourget,
Deputy Chairman,
Standing Senate Committee on
Transport and Communications,
Parliament Buildings.
Subject: *Central Aircraft Registry Act, Bill S-5*

You have requested comments on behalf of the Department of Transport in respect of the briefs and opinions expressed by the parties appearing at the Senate hearings on Bill S-5 particularly in respect of the objections made on behalf of the financial institutions.

I have been requested to point out to your committee that the principles set out in Bill S-5 have been promoted by the Department of Transport principally at the request of the Canadian Bar Association and of financial institutions interested in aircraft financing for the purpose of accommodating what was considered a public need in the area of aircraft financing. Other than that, the Department of Transport has no particular interest in Bill S-5. The failure of Bill S-5 to be passed would not in any way adversely effect the operations of the Department of Transport. In saying this however, it is recognised that the Department of Transport is perhaps the only agency of the government which could further the bill or carry out its provisions and give effect to the Convention on the International Recognition of Rights in Aircraft.

It is noted that all the provincial Attorney Generals have taken the position that the bill infringes upon property and civil rights and thus upon provincial legislative jurisdiction. Some of the provincial Attorney Generals are of the opinion that the passage of the bill would create uncertainty in this particular area which would continue in the absence of a clear judicial decision. The position of the Department of Transport is based upon the opinion of the law officers of the Department of Justice that the bill is within federal legislative jurisdiction and does not unnecessarily infringe upon the provincial sphere. Although the opinion of the Department of Justice is being relied upon, it is accepted that this does not settle the law on the matter and until a court decision is taken it must be admitted that there will be uncertainty in the minds of persons registering financial interests in aircraft as to the protection afforded by Bill S-5 and they will perhaps necessarily be obliged to continue registering in accordance with provincial legislation.

The briefs from the financial agencies concerned in aircraft financing objected to the provisions of the bill upon a number of common grounds, some of which are:

(a) that a floating charge is not provided for;

(b) provision is not being made for interests to be registered against aircraft engines only;

(c) that the provisions relating to seizure and sale of an aircraft are unnecessarily complicated and time consuming.

In relation to these particular objections it must be recognised that the purpose of the bill is to comply with the Convention on the International Recognition of Rights in Aircraft in order that financial interests registered against aircraft in Canada will be recognised in other countries adopting the Convention. The Convention provides the rules under which recognition will be given to registered financial interests in aircraft. One of the fundamental rules is that interests be registered against *an aircraft* registered in a country as to nationality, that is to say it must be an identifiable aircraft registered as to nationality. The only way an aircraft can be registered as to nationality is pursuant to the Aeronautics Act, which has been held to be federal legislation. If provision in the bill was made for a floating charge or for registering an interest against engines only there is in such cases no identifiable aircraft and accordingly such interests would not come under the Convention and there would be no protection. In addition such provisions would undoubtedly infringe on provincial legislation.

Also the provisions relating to seizure and sale of an aircraft particularly the requirement that six weeks notice of sale be given are provisions required, by the Convention for International Recognition. If the bill provided for a shorter period of time again the protection of the Convention would be lost.

Another objection by the financial institutions was that no provision is made for parties agreeing among themselves as to priority of registered interests under the bill. This is correct by there is nothing in the bill preventing parties from changing the order of priority of registered interests, for example a prior registered interest can be voluntarily removed and re-registered at any time which would permit another interest to be registered ahead of the one which had first priority. Further there is nothing in the bill which would prevent the continuation of the common possessory lien such as can be had for hangarage or repairs to the aircraft. In such cases the aircraft can be held until payment or satisfactory arrangements made.

A further objection by the financial intitutions was that once an aircraft had been seized on the security interest, it was necessary to continue with the process of applying to a court for authority to sell the aircraft and the parties concerned could not agree amoung themselves as to the manner in which the security interests might be satisfied. There is nothing in the bill to this effect provided there is to be no sale. We are all aware that many court actions have been commenced but very few proceed to the ultimate end provided by law, so also with the provisions of the bill. They are there to be used if necessary but there is nothing to prevent the parties having registered interests under the bill to agree at any stage to a re-financing of the aircraft and to a reshuffling of the priority of registered interests.

It should also be noted that aircraft can only be registered as to nationality in one state. Threfore a Canadian registered aircraft to be sold outside Canada, the registration of the aircraft in Canada would have to be concelled. The provisions of the bill provide that this cannot be done without the consent of all those who registered their interests under the provisions of the bill. This is something that provincial legislation could not possibly provide for.

In conclusion I would like to point out that the bill was drawn principally to provide for the International Recognition of Rights in Aircraft registered in Canada. Accordingly, the bill was drawn so that it would not determine the substantive rights of the parties registering interests under it but would contain the provisions which are essential to the Convention in order that rights registered under it would receive international recognition.

L. J. Shields,
Counsel,
Air Administration,
Ministry of Transport.

Published under authority of the Senate by the Queen's Printer for Canada

Available from Information Canada, Ottawa, Canada

Government
Publications

CAN YC 13
-1E2

FIRST SESSION—THIRTIETH PARLIAMENT
1974-75

THE SENATE OF CANADA

PROCEEDINGS OF THE

STANDING SENATE COMMITTEE ON

TRANSPORT AND COMMUNICATIONS

The Honourable J. CAMPBELL HAIG, *Chairman*

LIBRARY

Issue No. 9

THURSDAY, MAY 29, 1975

Complete Proceedings on Bill C-5, intituled:

"An Act to establish the Canadian Radio-Television and Telecommunications Commission, to amend the Broadcasting Act and other Acts in consequence thereof and to enact other consequential provisions".

REPORT OF THE COMMITTEE

(Witnesses: See Minutes of Proceedings)

28732—1

STANDING SENATE COMMITTEE ON
TRANSPORT AND COMMUNICATIONS

The Honourable J. Campbell Haig, *Chairman*

The Honourable Maurice Bourget, *Deputy Chairman*, P.C.

The Honourable Senators:

Blois	Lawson
Bourget	McElman
Burchill	Molgat
Davey	O'Leary
Denis	*Perrault
Eudes	Petten
*Flynn	Prowse
Forsey	Riley
Graham	Smith
Haig	Sparrow
Langlois	Welch—(20)

(Quorum 5)

**Ex officio* members

Order of Reference

Extract from the Minutes of the Proceedings of the Senate, May 1, 1975:

"Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Forsey, seconded by the Honourable Senator Heath, for the second reading of the Bill C-5, intituled: "An Act to establish the Canadian Radio-television and Telecommunications Commission, to amend the Broadcasting Act and other Acts in consequence thereof and to enact other consequential provisions".

After debate, and—
The question being put on the motion, it was—
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Carter moved, seconded by the Honourable Senator Perrault, P.C., that the Bill be referred to the Standing Senate Committee on Transport and Communications.

The question being put on the motion, it was—
Resolved in the affirmative."

Robert Fortier,
Clerk of the Senate.

28732—1½

Minutes of Proceedings

Thursday, May 29, 1975.

Pursuant to adjournment and notice, the Standing Senate Committee on Transport and Communications met this day at 10:00 a.m. to consider Bill C-5, intituled: "An Act to establish the Canadian Radio-television and Telecommunications Commission, to amend the Broadcasting Act and other Acts in consequence thereof and to enact other consequential provision."

Present: The Honourable Senators Haig *(Chairman)*, Blois, Bourget, Eudes, Flynn, Graham, and Petten. (7)

Present but not of the Committee: The Honourable Senator Connolly *(Ottawa West)*.

In attendance: Mr. R. L. du Plessis, Legal Adviser to the Committee.

The following witnesses were heard on behalf of the Communications Department:

Mr. Robert J. Buchan,
Special Policy Adviser to the Deputy Minister;

Mr. André Bluteau,
Director, Legal Services Branch;

Mr. Miville-Deschênes,
Legal Adviser.

After discussion and upon Motion of the Honourable Senator Flynn, it was *Resolved* to report the said Bill without amendment.

At 11:10 a.m., the Committee adjourned to the call of the Chairman.

ATTEST:

Mrs. Aline Pritchard,
Clerk of the Committee.

Report of the Committee

Thursday, May 29, 1975.

The Standing Senate Committee on Transport and Communications to which was referred Bill C-5, intituled: "An Act to establish the Canadian Radio-Television and Telecommunications Commission, to amend the Broadcasting Act and other Acts in consequence thereof and to enact other consequential provisions" has, in obedience to the order of reference of Thursday, May 1, 1975, examined the said Bill and now reports the same without amendment.

Respectfully submitted,

J. Campbell Haig,
Chairman.

The Standing Senate Committee on Transport and Communications

Evidence

Ottawa, Thursday, May 29, 1975

The Standing Senate Committee on Transport and Communications, to which was referred Bill C-5, to establish the Canadian Radio-television and Telecommunications Commission, to amend the Broadcasting Act and others Acts in consequence thereof and to enact other consequential provisions, met this day at 10 a.m. to give consideration to the bill.

Senator J. Campbell Haig (*Chairman*) in the Chair.

The Chairman: Honourable senators, this morning we are considering Bill C-5, the Canadian Radio-television and Telecommunications Commission bill. This bill was reprinted from the original bill and reported on April 11, 1975. It is the reprinted version we will deal with this morning.

We have with us this morning Mr. Robert J. Buchan, Special Policy Adviser to the Deputy Minister of Transport and Communications; Mr. André Bluteau, Director, Legal Services Branch; and Mr. Miville-Deschênes, legal adviser. Mr. Buchan will lead off with a short statement.

Senator Bourget: Mr. Chairman, before we proceed to that, may I point out to the committee that the second item on our agenda this morning, namely, consideration of the draft report relating to "Les beaux dimanches", will not be dealt with this morning owing to the fact that the English translation of the report needs to be revised extensively. We will probably be in a position to proceed with that in one or two weeks from now.

The Chairman: Thank you, senator. We will now hear from Mr. Buchan..

Mr. Robert J. Buchan, Special Policy Adviser to the Deputy Minister of Transport and Communications: Thank you, Mr. Chairman. Honourable senators, by way of general introduction to Bill C-5, there is little I can profitably add to what was said in the Senate on April 24 by the Honourable Senator Forsey when he moved second reading of Bill C-5. I would expect that this morning there might be some minor technical points of clarification regarding the bill with which I or the department's legal advisers, Mr. Bluteau and Mr. Miville-Deschênes, may be able to be of assistance to you.

With your permission, and in order to refresh everyone's memory as to the purpose and the essential elements of Bill C-5 which we have before us, I will briefly recapitulate what has been said on earlier occasions.

The essential purpose of this bill, which is purely of an administrative nature, is to entrust the regulation of all federally-regulated telecommunications to a single agency which would be known in future as the Canadian Radio-television and Telecommunications Commission. The initials CRTC would be preserved, as the word "Radio-television" in the title would be hyphenated and the "t" in "television" would be small case.

In order to effect this rearrangement of responsibilities of the regulatory agencies, the bill provides that when the act is put into force the new commission will continue to exercise the present powers of the CRTC over broadcasting undertakings, and the new commission will also apply the provisions of the Railway Act and the National Transportation Act to the telephone and telegraph companies.

In effect, the responsibilities of the existing Telecommunications Committee of the Canadian Transport Commission will be transferred to the new, enlarged CRTC.

The existing CRTC has five full-time members and ten part-time members. The new commission would have a maximum of nine full-time members and a maximum of ten part-time members. So you can see that there will be an addition of a maximum of four full-time members to the CRTC.

This bill represents the first phase of the government's two-stage revision and modernization of federal statutes relating to telecommunications. The second phase of this legislative program will contain a number of proposed changes in policy, as suggested in the government's position paper entitled, "Communications—Some Federal Proposals," which was tabled in the House of Commons on April 25 by my minister, the Honourable Gérard Pelletier.

Bill C-5, however, does not contain what might be described as policy proposals. It is purely administrative, or, as some have referred to it, is of a housekeeping nature.

Mr. Bluteau and myself, Mr. Chairman, are at your disposal to answer questions which the committee members may have with regard to the contents of the bill.

The Chairman: Thank you very much, Mr. Buchan.

Mr. Bluteau, would you care to add anything to that?

Mr. André Bluteau, Director, Legal Services Branch, Department of Communications: No, Mr. Chairman. Thank you.

The Chairman: Mr. Deschênes, have you anything to add to that statement?

Mr. G. Miville-Deschênes, Legal Adviser, Department of Communications: No, Mr. Chairman.

Senator Bourget: Mr. Chairman, I would like to ask Mr. Buchan the following question. The new setup will

have four new full-time members: what is the reason for adding four new full-time members and not keeping the five members who are there now?

Mr. Buchan: The CRTC currently has five full-time members, as I explained, and the Canadian Transport Commission has 17 full-time members. The Canadian Transport Commission now has six committees. When Bill C-5 is proclaimed and comes into force, the work and responsibilities of one of the six committees of the Canadian Transport Commission, the Telecommunications Committee, will be transferred to the new CRTC.

Of the 17 full-time commissioners on the Canadian Transport Commission, three have generally been responsible for the work of its TelecommunicationsCommittee. It was felt necessary and desirable by the government to provide an additional number of full-time commissioners to deal with the enlarged responsibilities that the new commission will be charged with, once the transfer of the responsibilities of the Telecommunications Committee to the new CRTC has been effected.

Senator Bourget: Does it mean there will be only one new member? The CTC now has a committee of three persons. Will those three persons be transferred to the CRTC, plus one new member? Is that the way it will be done?

Mr. Buchan: Might I reply that I understand the question, and certainly the reason for the conclusion? The answer, simply put is, no, there will be four new commissioners, because there will not be a reduction in the number of commissioners on the Canadian Transport Commission. That number will remain at 17, and their responsibilities will now be divided amongst the work of five rather than six committees. There will simply be an addition of four full-time commissioners to the new CRTC, so that there will be four new commissioners added.

Senator Connolly: Is the jurisdiction that the committee, or the CTC, now holds, to continue in respect of radio and television?

Mr. Buchan: Yes. The jurisdiction that the CRTC now holds will continue in exactly the same form with regard to broadcasting activities.

Senator Connolly: What is the relationship between the organization it is proposed to set up here and the Canadian Transport Commission?

Mr. Buchan: The responsibilities that the CRTC now has with regard to broadcasting activities will remain the same. The responsibilities and the manner of procedure of the Telecommunications Committee of the CTC will remain exactly the same when transferred over to the new commission. There will therefore not be any changes in the nature of the work, or of the responsibilities of the committee. Under the new bill, however, there will not be a formal committee structure in the CRTC. The Telecommunications Committee, as it presently exists under the Canadian Transport Commission, will not continue as a separate committee in the new CRTC.

Senator Connolly: All right. That is useful information. However, would you mind outlining what is the relationship between the body that it is proposed to establish by means of this bill and the Canadian Transport Commission? Is there an appeal from one to the other? Are there overlapping functions? Does the Canadian Transport Commission deal with the same area of activity that the proposed new body will deal with?

Mr. Buchan: Mr. Chairman, there will be no overlapping of functions. There will be no redundancy. It was thought desirable at this time to transfer the responsibility of the Telecommunications Committee—just simply one of the six committees of that commission—to the new CRTC, in order to reflect properly changes in technology that have taken place in the past 20 years.

When the Canadian Transport Commission and its predecessor were established, telephone and telegraph lines traditionally followed the railways, and it was considered natural that the federal regulation of telegraphy and telephony should be the responsibility of the same body that was charged with federal regulation of the railways; but in view of today's technology, with the use of microwaves and satellites, and since we are now into the world of coaxial cable and cable television, it is really a question of telegraphy and telephony coming closer in its application and use to the hardware in particular, and also in some respects to the activities, of the world of broadcasting. The government therefore considered it desirable at this time to transfer responsibility for the regulation of the telegraph and telephone activities, which it regulates, to the body that is primarily responsible for regulating communications activities which take the form of broadcasting.

Senator Connolly: Is it accurate to say this, that there is not actually to be a transfer now? I suppose there is to some degree, but what in fact you propose to do by this legislation is to discontinue any jurisdiction in the Canadian Transport Commission in respect of the areas you have just described, and to have that work done by the body to be set up by this bill. Is that so?

Mr. Buchan: That is a very accurate description, senator, with one caveat, and that is with regard to pending cases that would be before the CTC.

Senator Connolly: Until those work through the system, the jurisdiction of the Canadian Transport Commission will continue. Thereafter, all such cases will be before the body to be set up by this legislation.

Mr. Buchan: Yes, this is correct.

Senator Graham: I am just wondering if the personnel presently involved in handling this particular type of legislation, and handling the affairs of the Telecommunications Committee, will be transferred automatically from the CTC.

Mr. Buchan: Mr. Chairman, it is my understanding that there are discussions going on at this time with regard to the transfer from the CTC of some of those people who had been working primarily on regulation of telegraph and telephone activities to the new CRTC. The number of officials involved is relatively small. It is my understanding that it is in the nature of 10 or 12 who have been working predominantly in the area of telecommunications. Some of the staff of the CTC have been working

in part on telecommunications and in part on some of the other activities of the CTC.

Senator Graham: So your full-time commissioners will now be nine instead of five.

Mr. Buchan: That is right.

Senator Graham: Is it fair to say—I have heard this reported in the past—that the work load on the CRTC at some of its hearings has been so great that they had to divide the hearings, and have some of the commissioners hear some applications, while other commissioners heard others at the same time in different convention rooms, as it were? Is that true?

Mr. Buchan: That is true, sir.

Senator Graham: Has that affected the efficiency of the CRTC in any way?

Mr. Buchan: Mr. Chairman, I do not think, with respect, that it would be appropriate for me to comment on the work of the CRTC.

Senator Connolly: No, but you can answer the question, perhaps, in another way, or indeed, perhaps by answering this question: Do you think the addition of the larger number of personnel to the CRTC will work towards improving the efficiency of the CRTC in respect of hearings? Your answer will not be a reflection on the present activities of the organization, because we will not embarrass you by asking you policy questions, but we will try to find out what the purpose of the changes is.

Mr. Buchan: I believe that the one comment I might pass on the work of the CRTC is that it has been commended in many quarters for being very flexible and also because it has been prepared to leave the national capital region to go out into the country to hold its hearings. It has acquired the reputation of being responsive, flexible and quite quick in rendering its decisions, when one considers its nature as a regulatory body. As to whether or not it would be overloaded by taking on the responsibilities of the Telecommunications Committee, I think that is primarily the reason for the addition of four new commissioners. The new commission, the new CRTC, will also proceed to hire additional support staff and officials as soon as this bill is proclaimed and comes into force. It is my understanding that they will be hiring beyond the number presently employed solely in working with the Telecommunications Committee of the CTC.

Senator Connolly: Is the volume of work now done in this area, both by the CTC and its committees—one of which will be abolished—and the CRTC growing?

Mr. Buchan: Yes, the volume of work is growing as the use of telecommunications facilities in Canada expands.

Senator Connolly: Would you say that the rate of growth is great or small, or can it be anticipated that it will continue to grow? You see, the government comes here and says, "We want to add five members to a board." What we want to find out is why that many additional members are required to do the work now being done by fewer people, presumably—at least one fewer, in the light of Senator Bourget's question.

Mr. Buchan: Mr. Chairman, I do not really wish to get into the area of government policy.

Senator Connolly: You do not have to go into policy. All you really have to talk about is workload, the prospect in the industry and what is required to run an efficient operation, because this operation that is contemplated is a regulatory operation. If a requirement for more help in the field of applying these regulations is indicated, then there is no problem about this bill on that point.

Mr. Buchan: Mr. Chairman, the function is a regulatory one but it is also quasi-judicial. As a quasi-judicial function, it deals with an activity which in the past few years has received an increasing amount of attention. I can point to one particular activity of the Telecommunications Committee which the new CRTC with the enlarged number of commissioners will be handling in future—that is, applications by common carriers, and I might refer in particular to Bell Canada, for rate increases. In saying that I think that senators are aware of the amount of publicity and public interest that surround an application by a company such as Bell Canada for an increase in rates, and I think that senators are also aware of the increased amount of consumer interest and consumer activities in this area, and the consequent need for a quasi-judicial body of this nature to be adequately staffed and to be available to the Canadian people to hear the representations they have to make on a question such as an increase in Bell rates. Of course, this does not apply just to Bell; there are also the other common carriers which are federally regulated.

Senator Connolly: Any type of communications common carrier will now come before this new body in respect of rate applications.

Mr. Buchan: Rate applications regarding telephony and telegraphy which are regulated by the federal government.

Senator Flynn: Cablevision is presently under the committee of the Transport Commission?

Mr. Buchan: Cablevision is presently regulated by the existing CRTC.

Senator Flynn: How was it attributed to the CRTC rather than to the Transport Commission? Was it simply because it was connected to television? I do not think it is mentioned in the act.

Mr. Buchan: I think, senator, this question really gets close to the heart of one of the reasons that the government thought it desirable to move the Telecommunications Committee over to the new CRTC in that on a *prima facie* basis the hardware of cablevision may look like telephony because we are talking about coaxial cable, but the activity is deemed to be a broadcasting activity.

Senator Flynn: The transmission of a broadcasting activity.

Senator Connolly: Now we are being rather technical but it is important.

Senator Flynn: It is one of the main reasons for this bill in any event.

Senator Connolly: If I may pursue that for a moment, I hear a great many people, for example, talking about

cable in the Ottawa area and in particular with respect to cable on what they call channel 5 where reception is very, very poor. Will it be within the purview of this body to do something about that kind of service which is sold to the public and which does not seem to be quite as satisfactory as the service provided on other channels?

Mr. Buchan: Yes, it is within the purview of the CRTC, in its regulation of broadcasting activities and broadcast receiving undertakings, which is the legal terminology referring to cable television companies, in the review of their licences, to take whatever steps are necessary to ensure that the services provided are in keeping with the appropriate standards.

Senator Connolly: Has it that capacity and responsibility now?

Mr. Buchan: It has that responsibility now because cable is referred to as a broadcast receiving undertaking and therefore falls under the jurisdiction of the existing CRTC.

Senator Flynn: Was it intentional when you used the word "responsibility" but did not use the word "capacity" which was suggested by Senator Connolly?

Mr. Buchan: There was no intention in my mind to make a specific distinction.

Senator Flynn: Well then, what is "capacity"? Do all people who are providing cable television get a permit from the CRTC at the present time?

The Chairman: Yes.

Senator Flynn: I would like the witness to reply, Mr. Chairman.

The Chairman: I was just trying to be helpful.

Mr. Buchan: Mr. Chairman, I would prefer if this question were dealt with by our legal adviser, Mr. Bluteau.

Senator Connolly: It is perhaps a little unfair to ask any of these questions, but if any light could be shed on this it would be helpful.

[*Translation*]

Mr. André Bluteau, Legal Services, Department of Communications: The cable companies must send an application to CRTC. Obviously, some Quebec companies prefer not to send an application to CRTC for reasons other than that of the Federal government. But, at the present time, all the commercial broadcasting systems, such as the Ottawa Cablevision Company and so on, apply to the CRTC. The small community television systems, whose aerial is on an apartment building, for instance do not send applications because presently, the CRTC...

Senator Flynn: No decision has been taken by the Federal and the Provincial Governments on the matter of cablevision?

Mr. Bluteau: No. At the present time, you probably know that there is a conflict between the Federal, Quebec and other provincial Governments. There is for example Rogers Cable and this matter is presently before the Supreme Court.

Senator Flynn: This is to eliminate any possible doubt on the jurisdiction between the Transport Commission and the CRTC that all come under the same authority now?

Mr. Bluteau: I think that the operation is now what is called Phase 2. It is believed, the government believes that it is preferable to have one agency regulating both aspects, that is the transmission and broadcasting aspects so that it may work better. The constitutional question is apart from this.

Senator Flynn: This is because in the case of the telephone, at the present time, when one company operates in several provinces, there is no doubt that the Transport Commission has the jurisdiction?

Mr. Bluteau: Yes.

Senator Flynn: Now, in the case of telephone companies operating in only one province, this is still under the jurisdiction of provincial commissions?

Mr. Bluteau: Unless there has been a declaration on the general interest of Canada under Section 92.

Senator Flynn: I know, but there is none for the moment.

Mr. Bluteau: Yes, there is the B.C. Telephone.

Senator Flynn: Has B.C. Tel made an application?

Mr. Bluteau: Well, they had minor extensions.

Senator Flynn: It's very useful for them to get out of the Province of British Columbia.

Mr. Bluteau: Yes.

Senator Flynn: It is also very useful to have this declaration at the moment.

Mr. Bluteau: Yes.

[*Text*]

Senator Connolly: Could I return to the other point we were discussing and ask this: Under the present arrangement, does the CRTC have any responsibility for monitoring the adequacy of the service supplied by various licensees, such as regarding channel 5, in this area?

[*Translation*]

Mr. Bluteau: The problem with this system depends on the quality of installations. The present policy is progressive, the systems are gradually replaced. The level of regulation, at the technical level, is of an increasingly better quality, but there are sometimes historical cases. There was the same problem ten or five years ago and slowly the technical directors of communications attempt to improve the quality of services.

[*Text*]

Senator Connolly: But you do not supply the service; the service is supplied by the licensee.

[*Translation*]

Mr. Bluteau: No. But, they must get a technical certificate from the Minister of Communications stipulating that their system is able to transmit satisfactory programs

according to CRC standards. Then, the present policy, in view of the amount of investment is to do it gradually.

[*Text*]

Senator Connolly: In my opinion, the simple response of the consumer to the answer you have given is that, taking channel 5 in the Ottawa area as an example, it has bad quality and has had for a number of years. However, the quality of channel 7 is quite good. If one can give good service why cannot the other? Surely it is a matter of the proper type of installation?

[*Translation*]

Mr. Bluteau: Mr. Chairman, this question asks for a technical answer and I am not qualified. The channels are submitted to the interference of conventional television programs. I do not know much about the configuration of the channels here, but it is quite possible that the inferior quality of Channel 5 or Channel 7 is due to possible interference by other companies. In this case, the CRTC must decide which channel should be transmitted on an inferior quality channel.

Senator Flynn: This is mostly a geographical problem. It is so because in Quebec, CBC does not operate very well in many areas of the city, whereas Channel 4, CFCM Television is excellent just about everywhere, except in the lower part of the city, at the foot of Cap Diamant.

Mr. Bluteau: Moreover, conventional television creates interference on the television broadcasting channels.

[*Text*]

Senator Connolly: Allow me to ask a question with respect to clause 5 of the bill, which provides that persons who have any outside interests are not eligible for appointment to the commission. I presume that is to avoid a conflict of interest in the case of those to be appointed to this body. In view of a clause of that nature, is there any danger of not being able to obtain adequate, informed and experienced personnel to carry out the work proposed for the body to be established? Do you go to the industry mainly for these appointees, or are you seeking, rather, those who are not technically competent, but have judgment and other attributes?

[*Translation*]

Mr. Bluteau: If we refer to past experience, the industry has not provided all the commissioners. Moreover, in the past, there has been no prohibition as to the hiring of qualified people to work for both the CTC and the CRTC. The CTC has a similar clause.

Senator Flynn: A similar clause?

[*Text*]

The same situation applies with respect to the Canadian Transport Commission

[*Translation*]

Senator Bourget: Do the standards mentioned in section 5 apply to both full-time members and part-time members?

Mr. Bluteau: Yes.

[*Text*]

Senator Connolly: But you would not have any difficulty obtaining sufficient experienced appointees to staff the commission, notwithstanding such a clause.

[*Translation*]

Mr. Bluteau: In the past, the answer would have been, no. In the future, I believe that we can suppose that it will be the same thing.

Senator Bourget: With respect to these appointments, when the bill was introduced to the Senate by Senator Forsey, he mentioned that the Minister had made some propositions to the provincial government, whereby they could appoint some members of the Commission. Then, as Senator Forsey explained, he was not sure if the provinces had agreed to the offer of the Minister. Have new developments taken place since then?

Mr. Bluteau: I think that I could answer this way: the provinces, although it may not be enough, have received an offer of participation to the appointment to the Commission of part-time commissioners. The discussions are engaged at the present time and as you well know, the Conference of the communications Ministers has been adjourned to the month of July. For these reasons, my answer must be general. These discussions will resume in July.

Senator Bourget: And what are exactly the functions of the part-time members of the Commission? How many times do they meet? Do they often meet?

Mr. Bluteau: Yes. They have a part-time job, their functions are limited to radio broadcasting. They have responsibilities with respect to radio broadcasting, but not as far as telegraph or telephone are concerned. They are at the present time involved in the granting of radio broadcasting licenses. They attend auditions, give advice and take part in the final decision. But their functions are strictly related to radio broadcasting. Their participation is subject to the request of the president of the CRTC.

Senator Bourget: These part-time members represent the ten provinces? Ten members have been appointed?

Mr. Bluteau: No. The number ten was there before. They represent the regions, in a global way, this means that there are people from Montreal, Toronto, the Prairies, and the Maritimes. But they are appointed without consultation with the provinces, as it is the case for all the other commissions.

Senator Bourget: But the offer that the Minister made to the provinces did not suggest that later on, when this problem will be solved, this political question, there would be one part-time or permanent member for each of the provinces?

Mr. Bluteau: But I believe that the offer made with the Bill C-5 relates to a consultation with the provinces with respect to the appointment of the nominee who would be a part-time member, even if some wish him to be a full-time member. It is only a consultation. The appointed person will not be able to represent the province, since he must be a member of a federal commission, be submitted to the control of normal courts, and then to his oath of office. I think that this is all there is in the federal offer, in this case.

Senator Bourget: Thank you.

Mr. Bluteau: It was my pleasure, Senator.

[*Text*]

Senator Connolly: In my opinion, clause 5 is a very important clause to include in a bill such as this because in this industry there may be some vulnerability to situations involving conflict of interest. However, I suppose that the answer to the earlier general question I asked is, if you need people with technical competence to be appointed to this board, either as full-time or part-time members, they will simply have to sever their connections with any industrial background.

Mr. Buchan: Mr. Chairman, clause 5 refers to "pecuniary or proprietary interest". In the general sense of broadcasting, if we stay in that domain, currently on the CRTC the Vice-Chairman, Mr. Harry Boyle, is well known as a former broadcaster and is very experienced in the field of broadcasting.

The conflict of interest clause, clause 5, referring to "pecuniary or proprietary interest", would, as is normal in a case of this kind, require a commissioner to divest himself of his holdings.

Perhaps your concern relates to how we will get people who are technically competent and who may have had managerial experience in the industry and may therefore have an equity interest in a broadcasting undertaking. It should not be forgotten that there will be a permanent staff of officials who, presumably, would bring their technical competence and experience in the industry to bear when advising the commissioners prior to the commissioners' taking a decision.

Senator Flynn: Someone would not be able to buy shares of a telephone company operating in only one province and not coming under the jurisdiction of the commission. He could not purchase or hold any shares of that type, even if the transaction was not relevant to his responsibilities. I can understand that you have to define a very wide area.

[*Translation*]

Mr. Bluteau: Do I have to answer this question?

Senator Flynn: No, it is only an observation.

[*Text*]

The Chairman: Are there any further questions?

Senator Flynn: I move that we report the bill.

The Chairman: Should we report the bill, or should we go through it clause by clause?

Senator Connolly: We are familiar with the clauses of the bill and we have had very good comments from the witnesses.

The Chairman: It is moved by Senator Flynn, seconded by Senator Eudes, that the bill be reported to the Senate without amendment. Is it agreed?

Hon. Senators: Agreed.

The Chairman: I wish to thank the officials for their clear and concise statements on the purpose of the bill.

The committee adjourned.

Published under authority of the Senate by the Queen's Printer for Canada

Available from Information Canada, Ottawa, Canada

Government Publications

CA1 XC 14 -75

FIRST SESSION—THIRTIETH PARLIAMENT
1974-75

THE SENATE OF CANADA

PROCEEDINGS OF THE

STANDING SENATE COMMITTEE ON

TRANSPORT AND COMMUNICATIONS

The Honourable MAURICE BOURGET, P.C., *Deputy Chairman*

LIBRARY
AUG 1 2 1975
UNIVERSITY OF TORONTO

Issue No. 10

WEDNESDAY, JUNE 18, 1975

Examination of the Television Program entitled:

"Les Beaux Dimanches"

REPORT OF THE COMMITTEE

STANDING SENATE COMMITTEE ON
TRANSPORT AND COMMUNICATIONS

The Honourable J. Campbell Haig, *Chairman*

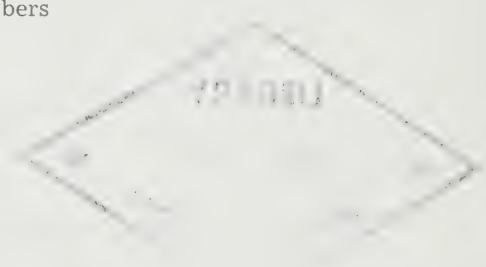
The Honourable Maurice Bourget, P.C.,
Deputy Chairman

The Honourable Senators:

Blois	Lawson
Bourget	McElman
Burchill	Molgat
Davey	O'Leary
Denis	*Perrault
Eudes	Petten
*Flynn	Prowse
Forsey	Riley
Graham	Smith
Haig	Sparrow
Langlois	Welch—(20)

(Quorum 5)

**Ex officio* members



Order of Reference

Extract from the Minutes of the Proceedings of the Senate, October 31, 1974:

"The Honourable Senator Langlois moved, seconded by the Honourable Senator Denis, P.C.:

That the Standing Senate Committee on Transport and Communications be authorized to examine and report upon the matter of the program entitled "Les beaux dimanches", televised on 28th April, 1974, on the French network of the Canadian Broadcasting Corporation.

After debate, and—
The question being put on the motion, it was—
Resolved in the affirmative."

Robert Fortier,
Clerk of the Senate.

Report of the Committee

Wednesday, June 18, 1975.

Pursuant to the Senate order of reference, dated October 31, 1974, the Standing Senate Committee on Transport and Communications reviewed the program entitled: "UN SHOW QUI M'TENTE AVEC DU MONDE QUE J'AIME" which was part of the television series entitled: "Les Beaux Dimanches", broadcast on April 28, 1974, on the French network of the Canadian Broadcasting Corporation.

Order of reference:

"Extract from the Minutes of the Proceedings of the Senate, October 31, 1974:

The Honourable Senator Langlois moved, seconded by the Honourable Senator Denis, P.C.:

That the Standing Senate Committee on Transport and Communications be authorized to examine and report upon the matter of the program entitled "Les beaux dimanches", televised on 28th April, 1974, on the French network of the Canadian Broadcasting Corporation.

After debate, and—
The question being put on the motion, it was—
Resolved in the affirmative.

Robert Fortier,
Clerk of the Senate."

As it appears in the Debates of the Senate of October 31, 1974, the purpose of the motion concerning the order of reference was to use this program to allow for a review of the Canadian Broadcasting Corporation programming by the Committee, as far as the achievement of the goals aimed at by the *Broadcasting Act* is concerned.

Your Committee held two study sessions on the review of the said program, on November 28, 1974 and February 19, 1975. At the first sitting, Mr. Laurent Picard, President of the Canadian Broadcasting Corporation and Mr. Raymond David, Vice-President and General Manager, French Services Division were heard as witnesses. Also present at that sitting but not heard were: Mr. Ron C. Fraser, Vice-President, Corporate Affairs, Assistant to the President; Mr. Don MacPherson, Vice-President and General Manager, English Services Division; Mr. Pierre Desroches, Vice-President, Planning; Mr. Denis Harvey, Deputy Assistant General Manager, English Services Division; Mr. Jean-Marie Dugas, Director of French Television; Mr. Marc Thibault, Director of Information Programs, French Services Division; Mr. Jacques Alleyn, General Counsel.

During this sitting a videotape of the program was shown and a simultaneous translation of the sound track was provided for the benefit of the English-speaking senators.

Evidence given by the witnesses from the Canadian Broadcasting Corporation revealed that the text of the program had been written by five authors. It was disclosed that the text of the program had not been submitted to either the programming branch or the officers of the Corporation for prior approval. The only evaluation made was by the Chief of the Variety Section of the Corporation. No evidence whatsoever was given that the Corporation had exercised any kind of control over the quality of the programming, despite the existence of a booklet entitled "Program Policy" prepared with the approval of the Board of Directors for the guidance of producers, journalists and senior officers. At the request of the members of the Committee, the President of the Corporation made this booklet available to the Committee.

Opinions were expressed by members of the Committee that the program was in very bad taste, that the text contained several vulgar, offensive and ambiguous expressions and that the program was aimed at ridiculing the constitutional authority of the country. Further, it appeared that the program was aimed at destroying national unity by attempting to demonstrate alleged inequality of treatment between the diverse ethnic groups of the country. In reply, the witnesses from the Canadian Broadcasting Corporation said that it was simply a satire that could lead to several interpretations but was altogether acceptable if judged in accordance with criteria established in other countries, namely in Great Britain and France. The witnesses were reminded that the program had rather to be judged by taking into account the political context of Quebec, and that, in this context, the text according to some senators contained a separatist message.

The Canadian Broadcasting Corporation officers questioned the comments of some senators to the effect that the program contained a message in favour of separatism. However, it is well known that in several instances the producers or commentators of the Canadian Broadcasting Corporation take undue advantage of their functions to propagate separatist ideas. Such an attitude has been denounced a number of times. For example, on April 1st, 1975, Mr. Claude Ryan, in an editorial in the newspaper LE DEVOIR from Montreal, referred to the attitude of

the Canadian Broadcasting Corporation employees in the following terms:—

[*Translation*]

> "In other fields, namely in the broadcasting field, Ottawa has accustomed us for a long time to an entirely different approach; the Canadian Broadcasting Corporation, in particular, is an agency which comes under the authority of the central government. Yet separatism has not found in any other place as in the Canadian Broadcasting Corporation a better means of expressing itself as freely. Quite often—without anybody from *Le Jour* having expressed their astonishment about it—the impression has been created that the protagonists of this idea were more solidly entrenched in the Canadian Broadcasting Corporation than its opponents. Numerous critics, scandalized by this fact, have, on several occasions, questioned if it is a normal situation that federal funds that support the Canadian Broadcasting Corporation could thus be used to destroy Confederation."

At the Committee sitting on February 19, 1975, the only witness heard was Mr. Pierre Juneau, Chairman of the Canadian Radio-Television Commission.

Questioned with respect to section 3 of the *Broadcasting Act*, which sets out the broadcasting policy for Canada, and section 16 of the Act, which describes the powers of the Commission, Mr. Juneau answered that the Commission, in a general manner, was vested with a regulating and supervisory power. He added that there seems to be in section 3 an insistence on the part of the legislator to make the licence owners and not the Canadian Radio-Television Commission bear the responsibility for individual programs—subject only to generally applicable statutes and regulations.

Mr. Juneau also mentioned Canadian Radio-Television Commission Regulation no. 5 which prohibits a station or a licence carrier from broadcasting:

> (a) anything contrary to law;
>
> (b) any abusive comment on any race, religion or creed;
>
> (c) any obscene, indecent or profane language;
>
> (d) any false or misleading news with the knowledge that it is false or misleading.

With respect to infringements of the Regulations and related penalties, Mr. Juneau stated that as a first step legal action must be taken following any breach of the Regulations. It is thus the courts that have the responsibility of determining the penality. He added that when the Commission finds that the regulations have not been followed, the Commission notifies the station concerned, and if there is evidence of negligence or ill-will, it brings the matter before the courts.

To a question pertaining to subparagraph (b) of section 3 of the Act, Mr. Juneau answered: "I think that the intent of the Act was not that the Canadian Radio-Television Commission express a judgment on each of the radio and television programs in Canada." Later on, Mr. Juneau added that it would be contrary to the intent of the Act if a public or private network were to have a general editorial policy aimed at the destruction of national unity. He also stated, in response to a question, that, in his opinion, the best way to prevent abuses in the future, would be for the public to inform the Canadian Radio-Television Commission and Canadian Broadcasting Corporation authorities of its disapproval.

Referring to the matter of Canadian Radio-Television Commission intervention, a member of the Committee asked the following question: "It has been suggested that over a long period of time there is an editorial thread that runs through the programming, particularly in Quebec, with the French network, that leans towards separatism. Where there is such a thread, are you dependent upon public complaint, or do you have any mechanism that monitors to check whether a particular station, a network, or any element of the broadcast media coming within your purview, is developing a trend of editorial approach that is contrary to the mandate for national unity?" In brief, Mr. Juneau answered in the following manner: "There is no such mechanism. We do not provide systematic supervision, if we mean by that that we would have to determine, through meticulous calculations, if not mathematical, whether there is an imbalance, whether greater importance is given to certain views to the detriment of diverging opinions." He added: *"I do not mean by that that we should not do it"*.

Following this answer by Mr. Juneau, it was pointed out to him, *that under the mandate of the Canadian Radio-Television Commission, it was the Commission's duty to provide a certain degree of supervision, especially when national unity is at stake and that in such a case, it would be appropriate to set up a permanent mechanism to fill this gap.*

It is clearly evident from Mr. Juneau's statement that the Canadian Radio-Television Commission does not exercise any direct supervision with respect to the quality of Canadian Broadcasting Corporation or private station programs, insofar as the objectives set out in the *Broadcasting Act* and regulations are concerned. Moreover, Mr. Juneau admitted that the Canadian Radio-Television Commission was not equipped to supervise programs, and acts only after having received a complaint. It would appear that the Canadian Radio-Television Commission is thus restricting its supervisory function, by interpreting too narrowly paragraph (c) of section 3 of the *Broadcasting Act* which states that:

> "(c) all persons licensed to carry on broadcasting undertakings have a responsibility for programs they broadcast but the right to freedom of expression and the right of persons to receive programs, subject only to generally applicable statutes and regulations, is unquestioned;"

Such an interpretation of the above paragraph is characterized by Mr. Juneau's opinion when he adds:

> "The Act clearly states that in those areas there must be freedom of speech and, when established, freedom of speech inevitably implies abuses."

With regard to this attitude of the Canadian Radio-Television Commission it is well to note the following objectives listed in section 3 of the *Broadcasting Act* which provides for a broadcasting policy for Canada:

> "It is hereby declared that:—
>
> (a) broadcasting undertakings in Canada make use

of radio frequencies that are public property and such undertakings constitute a single system, herein referred to as the Canadian Broadcasting system, comprising public and private elements;

(b) The Canadian broadcasting system should be effectively owned and controlled by Canadians so as to safeguard, enrich and strengthen the cultural political, social and economic fabric of Canada;

(c) all persons licensed to carry on broadcasting undertakings have a responsibility for programs they broadcast but the right to freedom of expression and the right of persons to receive programs, subject only to generally applicable statutes and regulations, is unquestioned;

(d) the programming provided by the Canadian Broadcasting system should be varied and comprehensive and should provide reasonable, balanced opportunity for the expression of differing views on matters of public concern, and the programming provided by each broadcaster should be of high standard, using predominantly Canadian creative and other resources;

(g) (iv) the national broadcasting service should contribute to the development of national unity and provide for a continuing expression of Canadian identity;

(j) the regulation and supervision of the Canadian broadcasting system should be flexible and readily adaptable to scientific and technical advances;

and that the objectives of the broadcasting policy for Canada enunciated in this section can best be achieved by providing for the regulation and supervision of the Canadian broadcasting system by a single independent public authority."

The Canadian Radio-Television Commission was established by Part II of the *Broadcasting Act* and section 15 of the Act determines the objects of the Commission, which are to regulate and supervise all aspects of the Canadian Broadcasting system with a view to implementing the broadcasting policy enunciated in section 3 of the Act. Part III of the Act provides for the establishment of the Canadian Broadcasting Corporation. Section 39 sets out the objects and powers of the Corporation and subsection (1) states clearly that the Corporation was established "for the purpose of providing the national broadcasting service contemplated by section 3 of the Act." Subsection 39(3) states that the Corporation is bound by Parts I and II of the Act.

The Canadian Broadcasting Corporation is absolutely bound to meet the objectives set out in section 3 of the *Broadcasting Act* for the implementation of the broadcasting policy of Canada.

CONCLUSIONS

1) The Committee does not wish to pose as a censoring body of the Canadian Broadcasting Corporation programming. But, although the program under study may not contain sufficient elements to warrant a severe criticism of the Canadian Broadcasting Corporation programming in general, this program belongs to a class that the Corporation should avoid presenting to the Canadian public. However, the Committee was justified in availing itself of this opportunity to review the programming of the Corporation and the control exercised by the Canadian Radio-Television Commission with a view to meeting the objectives set out by the *Broadcasting Act.*

2) The Committee wishes to point out to all those responsible for the administration of the *Broadcasting Act* that the Canadian Broadcasting Corporation is, under Section 39 of the Act, particularly responsible for providing the national broadcasting service contemplated in Section 3, which includes the obligation to *"contribute to the development of national unity and provide for a continuing expression of Canadian identity."* This obligation is not imposed on private stations. The Canadian Broadcasting Corporation must not be placed on the same footing as the owners of stations in the private sector relative to this particular obligation, as the Canadian Broadcasting Corporation and the Canadian Radio-Television Commission seem to believe.

3) Considering the evidence obtained, the statutes and other texts studied, the Committee believes that neither the Canadian Broadcasting Corporation nor the Canadian Radio-Television Commission is meeting entirely the objectives sought by the *Broadcasting Act.* It is imperative that these shortcomings be brought to the attention of the Ministers responsible for broadcasting in Canada and for the Canadian Broadcasting Corporation respectively, as well as of the officers of the Canadian Radio-Television Commission and the Canadian Broadcasting Corporation.

Respectfully submitted,

Maurice Bourget,
Deputy Chairman.

Published under authority of the Senate by the Queen's Printer for Canada

Available from Information Canada, Ottawa, Canada

CA1 YC 14
-T63

Government Publications

FIRST SESSION—THIRTIETH PARLIAMENT
1974-76

THE SENATE OF CANADA

PROCEEDINGS OF THE

STANDING SENATE COMMITTEE ON

TRANSPORT AND COMMUNICATIONS

The Honourable J. CAMPBELL HAIG, *Chairman*

Issue No. 11

WEDNESDAY, MAY 19, 1976

Complete Proceedings on Bill S-34, intituled:
"An Act to amend the Aeronautics Act"

REPORT OF THE COMMITTEE

(Witnesses: See Minutes of Proceedings)

28736—1

THE STANDING SENATE COMMITTEE ON TRANSPORT AND COMMUNICATIONS

The Honourable J. Campbell Haig, *Chairman;*

The Honourable Maurice Bourget, *Deputy Chairman.*

The Honourable Senators:

Blois, F. M.
Bourget, M.
Burchill, G. P.
Davey, Keith
Denis, A.
Eudes, Raymond
*Flynn, Jacques
Forsey, E.
Graham, B. A.
Haig, C.
Langlois, L.
Lawson, E. M.
McElman, Charles
Molgat, G.
*Perrault, R. J.
Petten, W. J.
Prowse, J. H.
Riley, D. A.
Smith, D. (*Queens-Shelburne*)
Smith, George (*Colchester*)
Sparrow, H. O.—(20)

**Ex officio* member

(Quorum 5)

Order of Reference

Extract from the Minutes of the Proceedings of the Senate, Tuesday, 18th May, 1976:

"Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Thompson, seconded by the Honourable Senator Carter, for the second reading of the Bill S-34, intituled: "An Act to amend the Aeronautics Act".

After debate, and—
The question being put on the motion, it was—
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Thompson moved, seconded by the Honourable Senator Carter, that the Bill be referred to the Standing Senate Committee on Transport and Communications.

The question being put on the motion, it was—
Resolved in the affirmative."

Robert Fortier,
Clerk of the Senate.

Minutes of Proceedings

Wednesday, May 19, 1976

Pursuant to adjournment and notice, the Standing Senate Committee on Transport and Communications met this day at 10:30 a.m., the Chairman, the Honourable Senator Haig, presiding.

Present: The Honourable Senators Bourget, Burchill, Denis, Eudes, Haig, Lawson, Molgat, Riley, Smith (*Colchester*) and Sparrow. (10)

Present, but not of the Committee: The Honourable Senator Thompson.

The Committee proceeded to the consideration of Bill S-34, intituled: "An Act to amend the Aeronautics Act".

Witnesses:

From the Ministry of Transport:

Mr. Stuart Grant,
Executive Officer, Civil Administration, (Security);

Mr. L. Shields,
Counsel, Air Administration.

The witnesses answered questions put to them by Members of the Committee.

After discussion and upon Motion of the Honourable Senator Burchill, it was *Resolved* to report the said Bill without amendment.

At 11:15 a.m. the Committee adjourned to the call of the Chairman.

ATTEST:

Mrs. Aline Pritchard,
Clerk of the Committee.

Report of the Committee

Wednesday, May 19, 1976

The Standing Senate Committee on Transport and Communications, to which was referred Bill S-34, intituled: "An Act to amend the Aeronautics Act", has, in obedience to the order of reference of Tuesday, May 18, 1976, examined the said Bill and now reports the same without amendment.

Respectfully submitted.

J. Campbell Haig,
Chairman.

The Standing Senate Committee on Transport and Communications

Evidence

Ottawa, Wednesday, May 19, 1976.

The Standing Senate Committee on Transport and Communications, to which was referred Bill S-34, to amend the Aeronautics Act, met this day at 10.30 a.m. to give consideration to the bill.

Senator J. Campbell Haig (*Chairman*) in the Chair.

The Chairman: We are discussing Bill S-34, to amend the Aeronautics Act, which was introduced by Senator Thompson on May 13, and the debate was continued by Senator Grosart last night.

We have, as our witnesses from the Ministry of Transport, Mr. Stuart Grant, Executive Officer, Civil Administration (Security). We have also Mr. L. Shields, Counsel, Air Administration.

We had an explanation of this bill on May 13 by Senator Thompson, and it was followed by a speech by Senator Grosart last night. The two officials are here for the purpose of answering questions that were not raised, or which were raised in the house but not answered. Are you gentlemen prepared to make a statement first or to answer questions? How do you wish to proceed?

Mr. Stuart Grant, Executive Officer, Civil Administration (Security), Ministry of Transport: Mr. Chairman, Senator Thompson was going to ask a few questions as we got into the subject.

The Chairman: Senator Thompson, are you prepared to proceed?

Senator Thompson: Thank you, Mr. Chairman. Mr. Grant, in my presentation I referred to the Tokyo, the Hague and the Montreal conventions. I also mentioned the number of signatories to those conventions. In my presentation I may have placed a stress, with respect to the conventions, which was not in relation to this bill. I wonder if you would clarify that.

Mr. Grant: Senator Thompson, there is no direct relationship between those three conventions and the legislation before us. Those conventions date back some years, as you know. I think that 1963, 1970 and 1971 are the dates. They were simply mentioned in our brief to indicate that Canada has been a forerunner in having ratified those conventions and in having done its work with respect to civil aviation security; and also to indicate our concern for the way unlawful acts towards civil aviation security were going at that time.

Senator Thompson: I had mentioned the conventions and the signatories. As I went through the conventions—Tokyo, the Hague, and Montreal—from your department I obtained a diminishing number of signatories by the time of the Montreal convention. Senator Grosart inferred from this an indication that perhaps there are countries which are not signing these conventions, that less and less countries are prepared to sign them.

Mr. Grant: I think the numbers relate more to the date of the conventions—that is, the dates they were first introduced. It takes a long time to have full ratification of an international convention. I think it is just because Tokyo was first, in 1963, that more ratified that convention than the other two, which came after.

At the same time, there are many small countries which really do not have any aircraft. They are still member countries of the U.N., but they would not really have any interest in ratification of those conventions. However, I can say that most of the large, responsible nations which operate civil air transportation internationally have, insofar as possible, ratified those conventions. There are individual reason why they cannot be ratified or why they are slow in ratifying. They could be administrative or legislative. Perhaps, as I mentioned, there is no interest because there are no aircraft. There are all sorts of reasons, peculiar to a particular country.

In ICAO, which is the International Civil Aviation Organization and a technical arm of the United Nations, every effort is being made to encourage member countries to ratify these conventions, but all they can do is encourage.

As I say, the three conventions have no specific bearing upon the legislation which we are now putting forward. What did happen in ICAO was that they took another tack and they came forward with an annex to the Chicago Convention of 1944. It is Annex 17, which is on civil aviation security. It lays out recommended practices and standards that countries should attempt to meet in order to provide the proper level of security in civil aviation.

The workings of ICAO are such that the annex is issued and states are asked to give reasons why they cannot abide by the conditions of the annex. If they do not respond within a given time or by a given date, it is assumed that they will meet those standards and recommended practices.

This, again, on the international scene, is the best that can be done to try to encourage and obligate states to meet certain standards. Not all of the states meet the same standards. Nor do they feel the same obligation as we do, as well as most of the other major countries such as France, Germany, Switzerland and Scandinavia which fly into Canada.

Senator Thompson: I have one further question. We realize the necessity of the immediacy of this legislation, with Habitat and the Olympics. Certinaly, a question in many of our minds is, why so late in bringing this before Parliament, and why was it not brought in 1971, for example, when there had been cases of hijacking in Canada?

Mr. Grant: In 1971, or that era, we were more conerned with people coming into Canada and creating a hijacking here. In fact, there were seven or eight hijackings that occurred between 1969 and 1972 in Canada. That was our concern. We put together, with the help of the Department of Justice, some legislation which is now part of the Aeronautics Act, which compelled Canadian air carriers in Canada to do a screening of passengers; and we in the Ministry of Transport took other measures ourselves to enhance the level of security which we thought was necessary.

As you know, the threat to civil aviation in Canada has moved to some extent. In a sense, we have not had a successful hijacking in North America in the three years. There have been some unsuccessful ones but not successful ones. We think that two things have helped this. It is the airport security which we are maintaining at our airports, and also the bilateral agreements which Canada, the United States and Mexico made with Cuba early in 1973. This was for the repatriation of hijackers if they wound up in that country.

Senator Sparrow: Would you explain to me what is a "successful" and what is an "unsuccessful" hijacking? Wbat is an unsuccessful hijacking?

Mr. Grant: If we refer to the hijacking that happened in 1972, or 1971, in Calgary, you may recall that a chap by the name of Cini hijacked an Air Canada aircraft out of Calgary and demanded that the aircraft land at Great Falls, Montana. He wanted $1 million. He took off again. He was going to some other country. I think the stewardess had some bearing on the outcome. because she really played a part and prevailed upon him to land and let the passengers off. The aircraft landed, once again, at Great Falls, Montana, and took off without the passengers. The hijacker, having received the ransom, had intended to parachute from the plane. This was the first of that type of attempt at extortion. It was while the hijacker was putting on his gear that the captain of the aircraft hit him on the head with an ax, following which the aircraft was able to return to Calgary.

Senator Sparrow: You refer to that as an unsuccessful attempt at hijacking?

Mr. Grant: Yes, indeed.

Senator Sparrow: But since the aircraft left the ground, it was hijacked for a period, was it?

Mr. Grant: Yes.

Senator Sparrow: So, in fact, it was a successful hijacking.

Mr. Grant: Well, the person involved is now under sentence. It was not a successful hijacking in the sense that he got away with it.

Mr. L. Shields, Counsel, Air Administration, Ministry of Transport: The offence was committed.

Mr. Grant: The offence was committed, yes.

Senator Sparrow: That is right, and it seems to me that if he only once got the plane off the ground, it would constitute a successful hijacking. He was in control of the aircraft for a period.

Mr. Grant: For a period, yes, but he did not achieve his ultimate aim.

Senator Sparrow: Oh, criminals never do.

Senator Bourget: Mr. Grant, can Canada, as a member of ICAO, unilaterally implement a program of security such as is now being proposed without the consent of the other members of ICAO?

Mr. Grant: Yes, senator. Our obligation to ICAO is to meet at least the level of the standards and recommended practices which are set out in Annex 17 to the Chicago Convention. Anything we do beyond that is our own business.

Senator Bourget: In his presentation to the Senate, Senator Thompson indicated that the same type of legislation was passed six months ago in the United States.

Mr. Grant: That is correct.

Senator Bourget: Are you aware of the reactions of countries that opposed that type of legislation, or were there countries that did oppose it?

Mr. Grant: Not in any vigorous sense. They all agreed that this was a proper measure. They were aware of the concern of the United States and the reason for it acting as it did in changing the legislation to include these measures.

Senator Bourget: What are the main reasons put forward by those countries which do not want to sign Annex 17 to the Chicago Convention?

Mr. Grant: All members of ICAO have signed Annex 17. However, within a given period of time, all countries must either abide by, and are obligated by, the conditions of Annex 17, or they must file reservations setting out why they do not abide by them, and this has not been done.

Senator Bourget: Reading the remarks of Senator Thompson, I note that on March 22, 1974, the Council of the International Civil Aviation Organization adopted Annex 17 to the Chicago Convention. That is two years ago.

At the end of that paragraph, Senator Thompson says:

> ... but not all countries have done so. That is, not all countries have implemented the requirements of Annex 17. Why such a delay on the part of other countries? If they accept Annex 17, why do they not implement those requirements?

Mr. Grant: We would like to know that, too, Senator Bourget.

Senator Bourget: You have no information as to why they are not implementing the requirements of Annex 17?

Mr. Grant: We really do not know why they have not, but we can surmise that perhaps it is because they do not have the same interest as Canada or the United States. They do not perhaps have large aircraft operating around the world. There are many members of ICAO which do not have a national airline that includes a 707 or a DC-8, or some aircraft of that type.

Senator Bourget: Would it be possible to have a list tabled with the committee setting out those countries which have not implemented these requirements?

Mr. Grant: I cannot supply the committee with a list of those countries which have not implemented the requirements of Annex 17, but I can with respect to the earlier conventions; that is, the Tokyo, the Hague, and Montreal

Conventions. I have that list and can deposit it with the committee.

Senator Thompson: Are there any major carriers flying into Canada that have not signed Annex 17? In other words, are there foreign carriers with landing rights in Canada which are not signatories to Annex 17?

Mr. Grant: All members are signatories to Annex 17, it being a part of the Chicago Convention. Annex 17 is an altogether different document than the conventions I spoke of, being the Tokyo, the Hague and Montreal Conventions. What I have with me is a list of those countries that have ratified those conventions.

Annex 17, on the other hand, is a chapter, if you like, which deals with security, of the Chicago Convention, which is the manner in and rules upon which countries will fly between countries and how they will act as they do so. It is a highly technical convention.

Senator Thompson: If I could emphasize my point, I am wondering whether there are any carriers coming into Canada which are not signatories to Annex 17.

Mr. Grant: Carriers that are not carrying out the conditions of Annex 17?

Senator Thompson: Yes.

Mr. Grant: We suspect that there are such carriers. We are not particularly pleased with some of the security measures that have been implemented in some countries that have been sending aircraft direct to Canada.

Senator Thompson: I think the concern of the committee in this respect is how the department arrives at these suspicions. What kind of inspection takes place in other countries; and, if your suspicions are justified, do we have sufficient muscle, particularly with Habitat and the Olympics coming up, to force these countries to comply with adequate security measures to ensure the safety of visitors to the Olympics and Habitat?

Mr. Grant: We feel that the legislation will certainly accomplish that. As to how we become aware of which carriers are involved and what they are doing by way of security, we accomplish this through the Canadian air carrier that operates a reciprocal air service. For example, CP Air flies to Madrid, and Iberia to Montreal; British Airways flies to Montreal and Toronto, and Air Canada to London. So, we are able to assess the security measures taken in other countries by means of the Canadian air carriers flying into those countries.

Also, we have in-flight inspectors who fly with our Canadian air carriers once or twice a year to each of these foreign airports for the purpose of making inspections. The Canadian embassies and high commissions in these other countries also have people who are geared to look at these measures, and the RCMP has personnel who have made inspections at airports in foreign countries.

Senator Bourget: Do you feel that the information coming only from our own Canadian carriers is sufficient to know that the foreign carriers are implementing the security program you are now putting forward?

Mr. Grant: One of the conditions will be that we will be asking the foreign air carrier to provide us with a manual or written statement with respect to what it is doing in its own country and also what it intends to do in Canada by way of security. Foreign air carriers must establish and maintain security measures, and we wish to know what those measures are. That is one of the conditions imposed on foreign carriers.

Senator Lawson: I can understand some of these procedures applying to carriers as such, but with Habitat and the Olympics coming up, are we not going to have a lot of military aircraft, private government aircraft, and private aircraft generally, coming into Canada? If so, who will conduct inspections on those aircraft? How is it proposed we deal with that situation?

Mr. Grant: If a foreign military aircraft comes to Canada, it will land at a military base in Canada. I can assure you there is a great deal of security in each one of these, and we would not anticipate any real problems there. If it were government aircraft, I suspect it would be a government charter of an airline, because there are not all that many actual government aircraft in the world that would be used to carry these dignitaries to Montreal. I foresee that an airline would be involved in most cases.

Senator Lawson: Do you think the penalty of $5,000 would act as any kind of deterrent? Do you think it is a sufficient penalty?

Mr. Grant: We do. We have reasonable agreement that this has worked in the past. It is a penalty that is in the Aeronautics Act; it has been there for some time, and we are using that same measure of penalty that has been in effect and has proven to be adequate.

Senator Lawson: Has the penalty ever been assessed? Is it an appropriate penalty, because of its lack of application?

Mr. Shields: The full penalty has never been charged against an air carrier for violation. It has always been some lesser amount. It is a penalty up to $5,000, but to my knowledge the full $5,000 has never been imposed on an air carrier.

The Chairman: Is it charged against the airline or the pilot?

Mr. Shields: It would be against either one. In no case has the full penalty ever been assessed.

The Chairman: But if the penalty is assessed, is it against the airline or the pilot?

Mr. Shields: It would depend upon who was being charged. Either the pilot or the airline could be charged, depending upon the offence.

The Chairman: Is the security required from foreign aircraft arriving in Canada the same as we have for foreign aircraft leaving Canada to go to a foreign city or another Canadian city? Is is the same in all places?

Mr. Shields: We would expect that the procedures a foreign carrier would take in respect of passengers arriving in Canada would be the same that we now require Air Canada to take, whether leaving Canada or coming into Canada. Under the act, Air Canada or any other Canadian air carrier has to maintain security procedures both inside and outside of Canada.

The Chairman: For persons and baggage?

Mr. Shields: For persons and baggage, yes. Similar security measures would be required by other air carriers before arriving in Canada. Once they have taken off you

cannot expect them to stop at any place, so they are going to have to do it in their own country, or at their last place of landing before coming here. We cannot legislate that they do it in their country, but we can legislate that they must show they have done this before landing in Canada, and they will be required to file their procedures for searching passengers and that type of thing. They would be told the system Air Canada and other Canadian air carriers now use and be told that they are required to adopt those procedures, and if they do not adopt them they cannot land in Canada; if they do so land they will have committed and offence. No carrier is interested in being fined; that is not the mentality of the operators of air carriers, that they want to be fined by any other country.

The Chairman: If an aircarft comes from a foreign country and has not done this, do you seize the aircraft and check the passengers and baggage before they get off the airport.

Mr. Shields: No. Under the Aeronautics Act we are concerned with the transportation of passengers. Before they get on the aircraft, the department has the right and jurisdiction to require protective measures in respect of the flight of those passengers. Once they have landed here the flight is all over.

The Chairman: What about baggage?

Mr. Shields: They take the baggage off. With respect to protection here, you will perhaps remember that the immigration people have had passed a special act in order to refuse entry to Canada of persons who are not Canadian residents, who may be suspected to be terrorists, and so on. There is a recent act that they have had passed to add on at the spot where we cannot legislate, because once these people have arrived at the airport we are all through with them, our jurisdiction has expired, because they are not then passengers. They have to go through immigration, and that is where they would be picked up. That is the reason for that recent act.

Senator Smith (Colchester): I remember the minister responsible for immigration came before the appropriate committee to explain this. He was questioned at considerable length, but he made no reference to that kind of problem.

Mr. Shields: We were aware of the Immigration Act procedures, because the matter had been discussed with them in view of the possibility of these people coming in; we could not do anything about them once they had landed. They have to go through customs and immigration, and if they are bringing in any unlawful weapons they would be picked up there. If they are suspected, there are security procedures that are current between various countries so that Canada will be informed that somebody may be on a certain aircraft and he should be searched. These things are brought forward and acted upon.

Senator Molgat: I should like to follow up on the question asked by Senator Lawson about aircraft landing at military bases. I have frequently travelled by that route, both on a military plane and as a so-called VIP. Although I make no criticism of the security checks, my impression is that because it comes under the description of VIP there is very little security check. You are telling us that aircraft will be landing at military airports, and I would question what security check will in fact be made. Again I intend no criticism, but in the past I know from personal experience it has been accepted that those who arrive have been checked somewhere else, or presumably are above check.

Mr. Grant: Military aircraft are subject to the Minister of National Defence. The Minister of Transport has absolutely no jurisdiction over military aircraft. We really cannot answer that question on military aeroplanes.

Senator Molgat: If aircraft from other nations are landing at military airports . . .

Mr. Shields: No.

Senator Molgat: You won't?

Mr. Shields: No. They would need to have special permission from the military. Any aircraft attempting to land at a military aerodrome without prior permission and everything being arranged would be intercepted.

Senator Molgat: I do not mean that. Let us assume a country is sending one of its military or their department of transport aircraft to Ottawa. They will land at Uplands, but they will not be going to the Air Canada base, they will be going to Hangar No. 10, whatever it is. There is no security check there.

Mr. Grant: If they go into a military base, that is the jurisdiction and responsibility of the Minister of National Defence; that is up to him. We really have no responsibility for military aircraft, foreign or Canadian.

Senator Molgat: Let us say they are not military aircraft. Let us say they are from the department of transport of another country. They land at a military base here. What security is there?

Mr. Grant: This legislation would take care of civil aircraft that was operating as it left that other country. It would require that civil aircraft must meet a certain level of security. As it is departing from a military airport, it is a matter for the Minister of National Defence to require a level of security, because that does not come under the jurisdiction of the Minister of Transport. Military airports are under the jurisdiction and responsibility of the Minister of National Defence.

Senator Molgat: Let me ask another question, then. Specifically re the Olympics, supposing a foreign country requests that its aircraft, regardless of whether it is a civilian airline or a military airline, land in Montreal, where will the checks be made? Will there be a check at the far end—remember, we are speaking now of a civilian airline or possibly a military airline—or will there be a check at our end?

Mr. Grant: There will be a check at the far end as requested by this legislation.

Senator Molgat: And if it is military?

Mr. Grant: This legislation has absolutely no bearing or no responsibility for military aircraft. It does not apply.

Senator Bourget: It is not in the bill; it is not covered by this bill.

Senator Molgat: That is what I want to identify; threre is a gap.

Mr. Shields: We would not expect that if Queen Elizabeth were coming over on a military aircraft she would be scrutinized or put through a security check either over there or here.

Senator Riley: Only in respect to toilets and whatnot.

Mr. Shields: When you get to that status, you would not anticipate that a search of the aircraft or of the people would be required.

Senator Molgat: If someone were interested in security activity, would that not be an obvious gap?

Mr. Grant: The RCMP have a responsibility for the security of dignitaries coming to Canada. They get aboard the aircraft, in most cases, at the far end. The Government of Canada relies upon the RCMP, therefore, to provide certain security for that aircraft as it is coming, whether it is military or civilian.

Senator Molgat: Are you satisfied that that security is adequate in light of the particular situation we are looking into with the Olympics?

Mr. Grant: I think we have to be satisfied with that. The RCMP are providing the guidance co-ordination of all security at the Olympics. They have accepted the responsibility for the protection and the security of foreign dignitaries. We tend to feel they can do their job properly.

Senator Denis: Do you not think, after consultation with the Department of National Defence, that the bill should cover both civilian and military aircraft? This would refer to what my colleague Senator Molgat was asking.

Mr. Grant: Unfortunately the Aeronautics Act only applies to civil aircraft.

Mr. Shields: What you say is correct, however, the regulations that have been made under the act have been made applicable only to commercial air carriers. We have left it to the Department of National Defence to make their own security regulations. I assume they have done this.

Senator Bourget: Has the Department of National Defence done something about it?

Mr. Shields: I cannot answer that question. I assume they have their own security regulations. I would not anticipate that, if the Department of National Defence were loading up an aircraft with their own men, they would search them all. It would only be in cases where they were loading someone they did not know.

Senator Denis: As far as the penalties are concerned, do they have power to seize the aircraft?

Mr. Grant: There is no power under the act to do that.

Senator Denis: There is a provision for a fine not exceeding $5,000. If they do not pay the $5,000, have you power to seize the aircraft?

Mr. Shields: Under the act, as presently constituted, there is no power to seize the aircraft. We have amendments under way in another act, which has been delayed, which does give power in the event they do not pay.

Senator Bourget: That will be another act, or another regulation? Is that something that will come before us?

Mr. Shields: We anticipate it later on in the year but we do not know exactly when. It would not have any relation to this. We have taken it that the enactment of the provisions embodied in this bill will give us sufficient authority to assure the necessary security regulations and procedures are being adopted at the other end. Most countries are willing to do it. What they say is, "You have no real requirement for us to do it. You have no law requiring us to do it. We will do it if we have to do it." Therefore, we say to them, "Here it is: you are now required to do it."

We do not anticipate people objecting to it at all. They know what the situation is. There has been, perhaps, some confusion in connection with the conventions on aricraft offences. All the countries could have signed all the conventions, and these regulations and these provisions would still be ineffective. These are entirely separate, something in addition to that.

The conventions relate to what happens if an aircraft is seized. Now, these provisions are designed to prevent the seizure of the aircraft in the first instance. This will enable us to make regulations so that they will adopt these procedures and seizure will not take place at all. That is the distinction between the conventions and these.

Senator Riley: What about private aircraft, either operated by owners or smaller aircraft charters; what happens in a case like that?

Mr. Shields: Regarding private aircraft, the owner has the responsibility himself. This was developed in respect of carrying passengers. We do not anticipate that a private owner would have very many passengers on board he would not know were a security risk or otherwise.

Senator Riley: What if he chartered the aircraft, a small aircraft capable of international travel?

Mr. Grant: If it is over 12,500 pounds, then the charterer is required to abide by these regulations.

I might just mention one other point which has come up and which might tend to clarify this. We have a certain air carrier operating a number of flights every year into Toronto airport.

Senator Riley: As a charter?

Mr. Grant: As a charter, yes, and a very prominent air carrier. We have asked from time to time, "Would you please undertake and do security checks at the Toronto airport the same as other air carriers?" They say, "Mr. Grant, you show us the legislation that requires us to do it and we will do it. Until that time, our business is to make money and this is an additional expense which we do not think should be incurred until you can show us that you have a requirement." This is our requirement, and we are hoping to get it.

That same air carrier came to us and said, "We need to provide security for our flights that are flying from Toronto to Belfast. This security is being required by the British Government for all flights leaving foreign points, flying to Belfast. How can we do this?" We have said, "There is really no problem. You can do it the same way as everyone else," but they did not want to do it for flights going to points apart from Belfast because of the expense. We did not have the legislation to require them to do it.

Senator Riley: Could they not make arrangements with Air Canada to use their facilities, or Canadian Pacific Air?

Mr. Grant: Yes, but Air Canada would charge them and they did not want to pay the cost unless there was specific legislation which required them to do it.

Senator Riley: This legislation will require them to do it?

Mr. Grant: That is right.

Senator Riley: As far as the point of ownership is concerned, say, if they were leaving Belfast or some other point of origin, then there is no requirement on them?

Mr. Grant: This legislation will require them to do it at Belfast also.

Senator Riley: How can you establish that they did it? Let us leave Belfast alone, and go to another country, say,- . . .

Mr. Grant: Paris?

Senator Riley: I do not not say Paris but one of the Eastern countries or the Middle East or some place like that?

Mr. Grant: We have very few flights coming from these other countries which do not have a Canadian air carrier already operating there. Let us take Tel Aviv. CPA operates into Tel Aviv. We would establish from CP Air security people, from our air carrier inspection people, from our Department of External Affairs in Tel Aviv, or through the RCMP who have a detachment, a single person or perhaps two, in Tel Aviv, what are the measures being taken for flights departing from Tel Aviv to points in the United States or Canada, or other points for that matter.

Senator Riley: Apart from the Canadian common carriers who may be operating there, if someone charters a flight, say, from Tel Aviv to Canada, and they say there has been a complete security check in Tel Aviv, do you have people there associated with the department who will check every flight coming out to see if the security measures have been enforced?

Mr. Grant: No; but we tend to rely upon the activity that has taken place at that airport. For instance, Tel Aviv has the best security of any place in the world. We know that. For anyone who has gone to Tel Aviv, there is even very secure inspection as you land, which we are not permitted to do in Canada because of our legislation. But in other places let us say

Senator Riley: Greece?

Mr. Grant: Greece—Athens. We do know the type of inspection that is being done in Greece. Unfortunately it is spasmodic. It tends to go up and down with the nature of the current threat. If a terrorist act has taken place in Athens, as has happened in the past, the security goes up for a period and tends to be of a severe security posture. It then begins to drift off again.

Senator Thompson: Does Greece not carry out the Annex 17 security measures?

Mr. Grant: We can only assume they do, because they have an obligation to do so.

Mr. Shields: The problem is no more different than it is in Canada. All air carriers are required in Canada to tell us what are their security arrangements. We do not check every airport to ensure that they do this on every flight, but we depend upon them to do so. Perhaps on occasion they may be a little lax, but there is no way of checking every flight at every airport to ensure that they do comply with the regulations which they said they would comply with, with their own procedures. We assume they do so, and occasionally we hear that they do not, and so the matter is taken up with them and the thing is rectified. It is no different within Canada as it would be in any other country.

Senator Molgat: I have first a general question. Are our regulations the same, roughly, as those of the United States, as those of the free countries of Western Europe? Are we roughly on a par, or are we asking for more?

Mr. Grant: We are on a par with the United States with this legislation. That which we do at our airports, the level of security, is on a par, I would say, with a number of very responsible governments, such as West Germany, France and Italy. But there are others that do not do it at the same level that we would seek and which is laid in Annex 17.

Senator Lawson: I have a couple of concerns. Following, first, on what Senator Riley raised on the question of private aircraft or so-called executive aircraft, with the Habitat Conference coming to Vancouver, I have suggested that we will have a dozen or two dozen executive aircraft which will bring in six, eight or 10 passengers. Presumably they will be excluded from the regulations and will not be covered. We could have 100 or 200 people, delegates or others, at that conference who bear no security check whatever, coming in on these private aircraft that are excluded from the 12,500 pound rule. They will be coming to the International Airport at Vancouver, where there is no military provision or regulations. Presumably they will be uninspected. My other concern is that I have heard it suggested—I do not know how accurate it is—that, as you may know, they have that pavilion which will be right in front of the court house steps in downtown Vancouver, where a lot of the activities will take place. I have heard it suggested, by the police force of that city and the RCMP, to the judges that they should close down the court house because they cannot guarantee security for the time of Habitat.

All this leads me to the conclusion that there are some serious gaps which they recognize exist and they advise taking some precautionary measures against. We have obvious visible weaknesses, such as those which have been raised by Senator Molgat and Senator Riley, and all the other security would seem to serve no useful purpose if we are going to leave all these visible gaps that we can readily see and are not going to take any steps to deal with them.

Finally, there is the penalty which I raised earlier. The fact that the penalty has never been assessed in its full amount is probably the best case for not increasing it. But I am concerned about the other two points raised by my confreres.

Mr. Shields: There is a slight distinction here, which we have to realize. As you say, all these people will arrive at Vancouver. If they have arrived, there has been no problem, so far as we are concerned. They have arrived safely.

Mr. Grant: There is another point . . .

Mr. Shields: Once they arrive, what they do in the country depends upon the other laws of the country. The immigration authorities, if they wish to turn them back, can do so; and there is the RCMP, and also our other laws. But once they arrive, we have done what we wanted to do, which is to ensure the safe transportation of passengers into Canada, that nothing has happened to the passengers on the way in. Our purpose is the transportation of passengers.

Senator Lawson: What they do after they arrive . . .

Mr. Shields: That is in someone else's court.

Mr. Grant: I might mention that private aircraft, in large airports such as Vancouver, Montreal and Toronto, do not use the same terminal which other passengers use; they go to another part of the airport.

Senator Lawson: There is the old airport in Vancouver. I have come in there myself on the same basis. You stand around. There is not a sould around, and then someone gets on to the telephone—the pilot or whoever—and perhaps someone will casually drive over from Customs or Immigration. Some of the oil countries buy executive jets in bunches, like grapes. There is no security whatever. Even the presence of an RCMP officer standing 100 yards away might make you cautious, but you could land your plane and unload eight or 10 machines guns and sundry boxes of grenades, and no one will even question you.

Mr. Shields: These are not to prevent people from coming in. It is to ensure safe transportation. Whether they are convicts, or whatever they are, the purpose is safe transportation.

Senator Thompson: Might there not be a bomb in a suitcase?

Mr. Shields: A bomb in a suitacase would indicate that perhaps it was not safe transportation and that is what we are looking for.

Senator Molgat: You are only concerned that the bomb does not go off in the aircraft?

Mr. Shields: Right.

Senator Molgat: But if it goes off after they land, it is somebody else's worry?

Mr. Shields: Yes, someone else can look after that.

Senator Smith (Colchester): I wonder if I have understood the situation correctly. I understand that you rely on information received from these various sources you mentioned, such as the RCMP, our own carriers, External Affairs representatives, and so on, as to the general level of security at a give airport in a given country. But I have not heard anything about how you ascertain, in respect to a given flight, whether that security has been properly applied or whether it has been lax, or whether there is any real security that applies to the passengers who are on it.

Mr. Grant: The manner in which we intend to do that is, we will ask the air carrier to provide us with a description of the security measures that he will take at each airport, and that he flies direct from that airport to a Canadian airport. That will be recorded, and we would assume that would apply for every flight. From time to time there will be checks made by these other people to be certain that he is in fact carrying out the measures that he said he would abide by.

Senator Smith (Colchester): It must be correct, with reference to any given flight, that you do not really know what measures of security have actually been taken in regard to the passengers on it. You assume that the degree of security has been carried out which the carrier has promised to carry out, and that is all.

Mr. Grant: That is right, and the same applies in respect of any airport in Canada.

Senator Denis: You do not assume that foreign carriers will tell you that no security measures have been taken.

Mr. Grant: In our experience, an airline that states it will be conducting a certain level of security, will do so. These air carriers belong to the International Air Transport Association, which is a very powerful and responsible organization, and when they state they will carry out a certain level of security, we can assume that they will do so. They are not irresponsible people. They are flying passengers for hire over long distances, so they need to be very responsible and abide by very strict regulations.

Senator Smith (Colchester): I thought I heard one of you say a few moments ago, in relation to Athens, that at certain times very strict security measures were applied, but that as the risk seemed to diminish the degree of security diminished. How do you ascertain when you are in one of these diminishing periods?

Mr. Grant: Through our people with External Affairs in Athens, through the CP Air flight that flies to Athens every other day, and through our air carrier inspectors who fly into Athens. If from one of these sources we find that the level of security is under what we think it should be, we then indicate to the appropriate authority at the Athens airport that we are not happy with the level of security for aircraft flying to Canada, at which point they can say, "Thank you very much. Good day!" That would be the end of it. We have absolutely no legislation or regulations by which we can require them to do anything in respect of their flights coming into Canada.

The Chairman: You cannot prevent them from landing in Canada?

Mr. Grant: We cannot even fine them for not having abided by the required security measures.

Mr. Shields: At the present time, we have no reason to prevent them from flying in. If the amendments are adopted, then we would have reason to prevent them from flying in.

Senator Riley: Are aircraft landing at Gander, or aircraft rerouted to Halifax, say, on their way to Montreal, checked at that point?

Mr. Grant: An aircraft landing at Gander and then going on to another point in Canada would be subject to certain security measures.

Senator Riley: When you say "certain security measures," do you mean that the passengers would be required to disembark and go through a security check?

Mr. Grant: If an aircraft lands at an international airport, as it is the first point of landing, the passengers would have to go through customs and immigration.

Senator Riley: But not a security check?

Mr. Grant: In order to get back on to the aircraft, the passengers would be required to go through a security check. Having gone through customs and immigration, in order to get back on the aircraft to proceed to further points within Canada, they would be required to go through a security screening process.

Senator Riley: A security screening similar to the one used by Air Canada for domestic flights?

Mr. Grant: That is right, because they are then at a point in Canada.

Senator Burchill: Do I understand that the regulations under this act have already been formulated?

Mr. Grant: Not in respect of the amendments contained in the bill before the committee today, senator. The regulations have been formulated in respect of previous amendments. If the amendments contained in Bill S-34 are adopted, it would only require a very small change to the present regulations in order to comply with the amended act.

Senator Burchill: Do you consider the present security screening conducted by Air Canada at the various airports in Canada adequate?

Mr. Grant: Yes, we do, senator.

The Chairman: Supplementary to Senator Burchill's question, what happens to the baggage that is checked on to the aircraft? What check is made of it before it is placed in the aircraft?

Mr. Grant: There is no formal check made of it, Mr. Chairman. However, we do have what we call a passenger profile, and if a person arrives fitting that profile, he or she can be asked to open his or her baggage for inspection before it enters the system which takes it on to the aircraft.

Senator Riley: Can you give the committee any indication as to how many weapons were confiscated from passengers in 1975?

Mr. Grant: I do not have the exact numbers with me. If you are speaking of guns, it would be something in the order of 275.

Senator Thompson: Still dealing with security measures, what security check, if any, is required of personnel at an airport, such as the cleaning staff, and so forth? Is there some security check in respect of those individuals?

Mr. Shields: Yes, senator.

Senator Thompson: Are you sure of that? My impression is that there is no such check at Malton.

Mr. Grant: As I understand it, the employer has a certain responsibility to ensure that the people hired are security cleared. The employer having received that assurance then provides the employee with an identification card which includes a picture of the individual, and you will see these people at major airports with their cards showing. In order to be in a restricted area at an airport, that identification card must always be visible.

Senator Thompson: If I could cite a personal example, I fly from Malton to Ottawa. At one time I had a parking space to the right of Administration Building 2, and I found a shortcut to my parking space was to go out the back door, across a landing ramp where I passed baggage carts, and so forth. I particularly enjoyed going that way in the winter months, and did so for about six months without being stopped. I mentioned this to a newphew of mine who is a member of the RCMP and he informed me that I should not be using that route. I stopped of my own volition.

Senator Molgat: You are an obvious security risk!

Mr. Grant: Pierre Burton, to our embarrassment, also found that route and brought it up on his radio program. It was closed very quickly, I can assure you. You would not be able to use that route now.

Senator Bourget: Is it your view that these regulations will be permanent and not only in place for the Olympics and Habitat?

Mr. Shields: They will be ongoing regulations, senator.

Senator Bourget: Can you give us some indication of the reaction of the foreign carriers in respect of these regulations? Are they willing to abide by them? Have you discussed the question to that extent?

Mr. Shields: We are not aware of any foreign carrier who will be practically opposed to the imposition of our regulations.

Senator Thompson: The United States has passed legislation ahead of time. Have they had to refuse any foreign air carrier from landing for not following the regulations?

Mr. Shields: If they have it has not been made known. They have not published the fact. We are not aware that they have.

Senator Thompson: I have one question that has been raised by Senator Buckwold. It concerns the fear of a reciprocity approach. Is there existing reciprocity taking place?

Mr. Shields: We do not think there is any fear in that respect. Under Annex 17 this is a recommendation of ICAO, and most countries have said they agree with the recommendations and will get them implemented. However, some of them are a little lax in getting them implemented.

Senator Thompson: By reciprocity I mean, for example, that in Paris they will say to Air Canada, "You are charging us to land. We are going to charge you for our security measures." Similarly for Air Canada and CP. Is that taking place in some countries?

Mr. Shields: No, we are not aware of that.

Senator Thompson: I understand that CP was paying in Mexico and several other countries.

Mr. Grant: In some countries they do have to pay for the security measures at airports. In other countries the security is provided by the government.

Senator Thompson: So there could be an increasing number of costs that will be charged to CP and Air Canada by countries that will follow your procedure?

Mr. Shields: Our procedure is to request the carrier to do it.

Senator Thompson: But also to pay for it.

Mr. Shields: Then it is up to him to do it himself. Our carriers will be doing it in those countries themselves. We are not really assessing a charge against the carriers themselves. Only if they do it in this country might that happen. We are requesting other countries to do it themselves.

Mr. Grant: I see your concern, senator, about Canadian air carriers perhaps having a charged imposed on them in other countries in the same manner that perhaps foreign

air carriers would be required to pay here. Under the existing legislation and regulations, we require that our Canadian air carriers do it in other countries; we require that now. They therefore have that imposition, in the same way that they do it in Canada.

Senator Thompson: But it would not be an unhappy situation if other countries were also passing the same legislation as you have.

Mr. Grant: Indeed not.

Senator Thompson: That is my point.

Mr. Grant: It would strengthen the whole system of security in civil aviation internationally.

Senator Thompson: Canada and the United States are forerunners in this. We are not behind; we are actually ahead.

Mr. Grant: Indeed, yes. At those other conventions we were also forerunners.

Senator Molgat: We have been through a period during which hijackings and that kind of activity were prevalent. In our society we have had other similar periods. At one stage it was very popular to raise hell at universities; the university president probably had the worst job one could think of. That has stabilized. If in a couple of years the situation stabilizes, will you come back to us and say that we should remove these restrictions? Will you be monitoring this? Are we likely to be faced with a forever situation?

Mr. Grant: It is our responsibility to be receptive to any changing trends, so that we do not impose on air carriers more restrictions than are absolutely necessary. We are trying our best to automate the system, so that intrusion on the privacy of the passenger is not imposed any more than is necessary. The X-ray does this. This costs quite a bit of money, but it does help the whole system. I can give you the assurance that we will be watching this closely and be sensitive to the system, to be sure that, if there is reason to limit to some extent the level that is required, we will do it.

Mr. Shields: We do not anticipate that we will be back for a change in the bill.

Mr. Grant: No.

Mr. Shields: The bill enables the making of regulations. Our regulations would be modified in that respect. We would not necessarily be back with other legislation. The regulations might be modified as circumstances make this necessary. It will be taken care of in that way.

Senator Molgat: My concern is this. We are really adding a fair element of cost to the whole system. At some stage I would like to get the real cost of what we are doing to achieve security. Because of present circumstances we may be forced to do that, but I would not accept that we have to do this for ever. I believe the department should be very conscious of this and be looking at the situation. Is the cost justified? The circumstances will, I think, change.

Mr. Grant: If they do, you can be assured that the Air Transport Association of Canada, which is the association of major air carriers, will bring pressure upon us to do what you suggest. We are now committed by Treasury Board to enter into an in-depth study of security at international airports immediately after the Olympics. As I am sure you can appreciate, we have been reluctant before the Olympics to remove any measures now in place. However, we are committed to undertake this after the Olympics, and I have been instructed by my deputy minister to get at it now, and therefore hopefully have in place by the end of September any reductions we can see fit to make.

Senator Molgat: The security measures now being taken at Canadian airports, whether it is the scanner or staff, are paid for by you?

Mr. Grant: The air carriers pay for the screening of passengers, for those people who put passengers through the walk-through, the magnetometer, or the X-ray.

Senator Molgat: The air carriers pay it?

Mr. Grant: Yes. The equipment is provided by the Ministry of Transport.

Senator Molgat: Can someone give us the total cost?

Mr. Grant: Of that?

Senator Molgat: Of the total security system. I think this is something we ought to know.

Mr. Grant: It is costing the air carriers approximately $4 million to screen passengers.

Senator Molgat: That is jointly?

Mr. Grant: They pay this jointly. The cost would be approximately $200,000 for foreign air carriers in providing security.

Senator Molgat: What does the Canadian Government provide through DOT?

Mr. Grant: The Canadian Government is providing the RCMP at airports; it has been putting up fencing. This program is just about in place now. We were aiming to be there for the Olympics. There is also the equipment I mentioned; the research and development going on into automated systems, and maybe sniffing bags to be sure that there are no explosives in them, which might be something for the future, so that the bags could simply be sniffed to ensure they are satisfactory.

Senator Thompson: When you refer to equipment, is that the X-ray? I call it X-ray, but there must be another name for it.

Mr. Grant: It is the X-ray and the magnetometer. The RCMP have a policing function too, as you probably recognize, for the parking and so on. The security part may be $8 million in a year.

Senator Molgat: That is the Canadian Government?

Mr. Shields: The Department of Transport.

Senator Molgat: Transport only?

Mr. Shields: Yes.

Senator Molgat: Exclusive of the RCMP?

Mr. Grant: That includes the RCMP. That is for the RCMP to take care of that part of security.

Senator Bourget: What percentage would that represent? Would it be about two-thirds of the total expense for security measures?

Mr. Grant: Security accounts for approximately two-thirds of the total cost for the RCMP at this point in time.

There may be a change in that as a result of this in-depth study that we will be conducting.

Senator Thompson: When we are building an airport, is there a large input with respect to security, in the design of the airport?

Mr. Grant: Indeed, yes. We tend to design our terminals with security in mind, and how we can limit costs as a result.

Senator Thompson: Did you do this with Mirabel?

Mr. Grant: Yes, we were talking security with Mirabel as it was being developed, so we were able to get certain security designs into the terminal. Now, Terminal 1 at Toronto is a difficult matter because there are so many modules around that particular terminal and we cannot really make a sterile area out of Terminal 1 at Toronto.

The Chairman: To stop Senator Thompson from going in the back door?

Mr. Grant: That is right.

Senator Thompson: We have approximately 150 airports?

Mr. Grant: That is right.

Senator Thompson: There must be some that you would consider to be like seives, and others which probably meet your requirements.

Mr. Grant: We have security people in our regional offices whose job it is to go out and look at each airport and assess that specific design, to see how effective it is.

Senator Thompson: Are you satisfied that all your airports built now are secure?

Mr. Grant: Yes. We have measures which must be met, such as requiring that gates be closed adjacent to the terminal, and the RCMP are there for the loading and unloading of passengers. These are measures which enhance the security.

Senator Riley: You would have better security at Pickering if you could build that.

Mr. Grant: We might have needed it as it was being built!

Senator Molgat: Are you involved in these security negotiations in the original design, back at the architectural level?

Mr. Grant: Yes, in terminals being designed now.

Senator Molgat: You mentioned Terminal 1, but I would hope you were involved in Terminal 2 because the reason for that was security.

Mr. Grant: That was before my time.

Senator Bourget: This program does not interfere in any way with provincial rights?

Mr. Grant: Absolutely not; nothing whatever to do with that.

Senator Thompson: There is an urgency, in your eyes, about this legislation?

Mr. Shields: We anticipate provincial co-operation in relation to anything that happens which comes under the Criminal Code. We expect that, and it has always been forthcoming.

Mr. Grant: We would like to see this go through as soon as possible because of the impending international events taking place in Canada.

Senator Bourget: This is the reason why se sent for you to be here this morning.

Senator Burchill: I move that the bill be passed without amendment.

Senator Bourget: I second the motion.

The Chairman: Senator Burchill moves, seconded by Senator Bourget, that the bill be reported without amendment. Any questions?

All in favour? Opposed?

Hon. Senators: Carried.

The committee adjourned.

Published under authority of the Senate by the Queen's Printer for Canada

Available from Printing and Publishing, Supply and Services Canada, Ottawa, Canada K1A 0S9

LIBRARY
NOV 09 1976
UNIVERSITY OF TORONTO

FIRST SESSION—THIRTIETH PARLIAMENT
1974-76

THE SENATE OF CANADA

STANDING SENATE COMMITTEE
ON

TRANSPORT AND COMMUNICATIONS

The Honourable J. CAMPBELL HAIG, *Chairman*

INDEX

OF PROCEEDINGS

(Issues Nos. 1 to 11 inclusive)

21894—1

Prepared

by the

Reference Branch,

LIBRARY OF PARLIAMENT

THE SENATE OF CANADA

Standing Committee on Transport and Communications
1st Session, 30th Parliament, 1974-1976

INDEX

Aeronautics Act
Aircraft registration
Proposed amendment 6:13
Provisions 2:6, 10-1; 6:11
Canada Shipping Act, relationship 6:13

Aeronautics Act, An Act to amend
See
Bill S-34

Aircraft
Central registry, security interest
Commercial crafts 2:6, 10
Component parts 2:5-6, 12; 6:9-11, 14-5, 19; 8:6, 15
Foreign countries 2:9-10; 6:9
Items registered 2:12
Notice of interest 2:12, 14-7; 6:9
Priority 2:5-6, 11, 13, 16; 6:11-2, 16-7; 8:15-6
Provincial acts, deletion 2:11-2, 18
Test flying 2:10
Time limit 2:5
Financing
Canadian industry, external dependency 6:6
Defaults, seizures 2:15-6; 6:6, 8-10, 12-3, 15, 17-9; 8:12-6
Financial industry
Disadvantages 6:6, 8-9, 14
Protective measures 6:11-2, 14
Outlook 6:5-6, 9
Floating charges, aircraft designation 2:7, 13, 17; 6:15-6; 8:15
Liens
Filing, time limit 2:14-6
Mechanics 2:14-5
Provincial registration 2:9, 15
Re-registration, foreign country 2:10
Operating numbers, kinds 16:18-9
Operation regulations 2:10
Prices 6:5, 9-10
Property rights 2:7
Purchase, refurbish, foreign countries 2:9-10
Sales tax provisions 2:11
Security measures
Airports, design consideration 11:15
Charters, private planes 11:10-2
Description, standards, costs 11:9-10, 12-5
Foreign aircraft, airports
Canadian inspection 11:8-9, 11-3
Fees 11:13-4
Guns confiscated 11:13
Hijackings 11:7
International conventions, ratification, problems 11:6-8, 10, 13
Military aircraft 11:8-10
MOT study 11:14-5
Penalties 11:8-10
Provincial cooperation 11:15
U.S., Western Europe comparison 11:7, 11, 13-4

Aircraft Registry Act
See
Bill S-5

Alberta, Province
Acting Deputy Attorney General, Bill S-5, position 8:11

Argue, Hon. Hazen, Senator (Regina)
Bill C-48 7:8-10

Asselin, Hon. Martial, Senator (Stadacona)
"(Les) Beaux Dimanches" 3:17-8; 5:6-8, 11-5, 19
Bill S-5 6:6-10, 12, 15-6, 18, 20-2, 24

(Les) Beaux Dimanches
See
Canadian Broadcasting Corporation

Bellevue, G. A., Canadian Bankers' Association
Bill S-5 6:15

Bill C-5, Canadian Radio-television and Telecommunications Commission Act
Discussion, Clause 5—Outside Interest 9:10-1
Purpose 9:6, 9
Report to Senate without amendment 9:4-5, 11
See also
Canadian Radio-television and Telecommunications Commission
Canadian Transport Commission
Provinces

Bill C-48, An Act to amend the Railway Act
Discussion, Clause 2—Information request, use, proceedings 7:6-7, 9
Purpose 7:6, 8
Regional applicability 7:8
Report to Senate without amendment 7:4-5, 10
See also
Canadian Transport Commission
Provinces
Railways

Bill S-5, Aircraft Registry Act
Aeronautics Act, relationship 6:13
Committee recommendations 8:5
Constitutionality 2:6-9, 11, 13, 17; 6:6-7, 10, 14-6, 19-22; 8: 5-6, 9-15
Discussion
Clause 5—Notices of Interest 2:12; 6:9
Clause 7—Claims priority 2:16-7; 6:15-7, 20
Clause 8—Interest notice not recorded 6:20
Clause 9—Aircraft seizure, sale 6:9, 17-8; 8:7
Clause 10—Execution proceedings 8:7, 10
Clause 13(1)—Notice deemed removed 2:16
Clause 17—Transitional 2:16-7; 8:7, 9, 14
Geneva convention, compliance 2:7, 10, 17; 6:7, 9, 13, 19; 8:6, 14-6
Provincial Corporate Securities Registration Act, relationship 2:13
Purpose 2:5, 9
Referral to Supreme Court, proposal 6:7-8, 24
Report to Senate without amendment 8:4-5, 8
U.K., comparable legislation 2:6
See also
Aircraft
Individual provinces
Provincial Corporate Securities Registration Act
Transport Ministry

Bill S-11, An Act respecting British Columbia Telephone Company
Bell Canada legislation, similarity 1:8
Legal form, approval 1:9
Purpose 1:6-7
Report to Senate without amendment 1:5
See also
British Columbia Telephone Company

Bill S-18, An Act respecting International Air Transport Association
Report to Senate without amendment 4:4-5, 8
See also
International Air Transport Association

Bill S-34, An Act to amend the Aeronautics Act
Aeronautics regulations, conformity changes 11:13-4
Background 11:6-7
Military aircraft, application 11:9
Purpose 11:10-2
Report to Senate without amendment 11:5, 15
See also
Aircraft—Security measures

Blair, D. Gordon, Counsel, International Air Transport Association
Bill S-18 4:6-7

Bluteau, André, Director, Legal Services Branch, Communications Dept.
Bill C-5 9:6, 9-11

Bourget, Hon. Maurice, Senator (The Laurentides), Committee Deputy Chairman
"(Les) Beaux Dimanches" 3:8-9; 5:5, 8-12, 14-5, 18-20
Bill C-5 9:6-7, 10-1
Bill C-48 7:7, 9
Bill S-5 2:6-8, 13; 6:5-10, 13-8, 20-4; 8:6-8
Bill S-11 1:9
Bill S-18 4:6-7
Bill S-34 11:7-10, 13-5

British Columbia, Province
Attorney-General, Bill S-5, position 8:11-2
Central registry system, security, interests, aircraft 8:12
Mechanics Lien Act, provisions 8:12

British Columbia Telephone Company
Capital
Increase 1:6-9
Structure, flexibility 1:6-9
Operations, territories 1:9
Ownership 1:8
Shareholders, meeting 1:6

British Columbia Telephone Company, An Act respecting
See
Bill S-11

Broadcasting Act
Broadcasting policy 5:5, 7, 10, 15; 10:5-6
Copyrights, responsibility 5:11
Infractions, penalties 5:6, 8
Provisions
CBC 5:6, 18; 10:6
CRTC 5:5-8, 11-3; 10:5-6

Buchan, R.J., Special Policy Adviser to Deputy Minister, Communications Dept.
Bill C-5
Discussion 9:7-9, 11
Statement 9:6

Burchill, Hon. G. Percival, Senator (Northumberland-Miramichi)
Bill C-48 7:8, 10
Bill S-5 6:23; 8:6, 8
Bill S-34 11:13, 15

Butler, Michael, Counsel, British Columbia Telephone Co.
Bill S-11 1:6-9

CRTC
See
Canadian Radio-Television Commission

Cablevision
CRTC regulation 9:8-10
Federal-provincial dispute 9:9

Canada Shipping Act
Aeronautics Act, relationship 6:13
Selling rights provisions 6:13

Canadian Bankers' Association
Bill S-5, position 6:15-8

Canadian Bar Association
Bill S-5, support 2:6, 8; 6:19-20, 23-4; 8:15

Canadian Broadcasting Corporation
(Les) Beaux Dimanches
Authors, La société des auteurs, contracts 3:5-6; 10:4
Committee report 10:4-6
Copyrights 3:5-6, 8-9
Cost 3:6, 9
English dubbing, translation 3:5, 8
Mrs. Léger, representation 3:13-5; 5:6, 8
Public reaction, record, French Canadians 3:14-6; 5:7, 9-10, 12, 14, 18-9
Queen, representation 3:12-3, 15; 5:6, 8
Responsibility 3:8
Review, authorization, department heads 3:6-7; 5:9, 12
Satire, indecency 3:7, 10-8; 5:6-9, 14-5
Comparisons
BBC 3:16-7
CTV 3:13
ORTF 5:6
Le Devoir, critical editorial 10:4-5
Expenditures 5:9
French network, program improvement, criticisms 5:17; 10:5-6
Parliamentary control 3:14; 10:6
President, power, responsibilities 3:9-10, 13
Producers strike 3:18
Program Policy 3:7-8; 10:4
Programs
La Sagouine 3:14-6
Policy guidelines 3:7-13, 15-6; 5:10-1
Satirical broadcasts, subject-matters 3:7, 10-8
Role, control 3:10, 12-3; 5:18, 19; 10:5-6
See also
Broadcasting Act

Canadian Radio-television and Telecommunications Commission
Canadian Radio-Television Commission, relationship
Members 9:6-8
Powers 9:6
Canadian Transport Commission
Relationship, functions 9:7
Telecommunications Committee 9:6-8
Members
Numbers, eligibility, recruitment 9:6-8, 10-1
Part-time, functions, appointment 9:6, 10
Powers 9:6
Title initials 9:6
Workload, efficiency expected 9:8

Canadian Radio-television and Telecommunications Commission Act
See
Bill C-5

Canadian Radio-Television Commission
Broadcasting Act infractions, actions 5:6-8, 12-3; 10:5
Cablevision, regulation 9:8-10
Canadian Radio-television and Telecommunications Commission, relationship 9:6-8
Committee criticisms 10:6
Licensing jurisdiction 5:12
Position, *Les Beaux Dimanches* 5:9-10, 12, 14; 10:5
Powers, functions 5:5-6, 11-4, 16-8; 10:6
Programs
English, French, complaints 5:19; 10:5
Regulations 5:7, 11
Regulation
CBC 5:11-3; 10:5
Commercials 5:12, 16
Private stations 5:11, 10:5
Program policy 5:7, 11-2
Workload 9:8
See also
Broadcasting Act

Canadian Transport Commission
Canadian Radio-television and Telecommunications Commission
Personnel transfer 9:7-8
Relationship, functions 9:7
Telecommunications Committee, transfer to 9:6-7
Commissioners, number 9:7
Information
Commission possession 7:9
Provincial hearings, confidentiality 7:6-8
Telephone companies, jurisdiction 9:9
Workload 9:8
See also
Bill C-5
Railways

Carlile, J. C., Vice-President, Administration, British Columbia Telephone Company
Bill S-11 1:9

Chartered Airplanes
See
Aircraft—Security measures
International Air Transport Assoc.—Chartered Services

Communications Dept.
Communications—Some Federal Proposals 9:6

Connolly, Hon. John J., Senator (Ottawa West)
Bill C-5 9:7-11

Coolican, C. C., Canadian Bankers' Association
Bill S-5
Discussion 6:16-8
Statement 6:15-6

Cowie, C. A., Inspector, Civil Aviation Regulations and Licensing Section, Transport Ministry
Bill S-5 2:9-11

David, Raymond, Vice-President, General Manager, French Services Division, Canadian Broadcasting Corporation
Television program examination, *Les Beaux Dimanches* 3:5-10

Denis, Hon. Azellus, Senator (La Salle)
"*(Les) Beaux Dimanches*" 3:6-11, 15-6, 18; 5:8-12, 14, 19
Bill C-48 7:7

Bill S-5 6:12-3, 17
Bill S-11 1:7-8
Bill S-34 11:10

Desruisseaux, Hon. Paul, Senator (Wellington)
"(Les) Beaux Dimanches" 3:5-14, 19; 5:11-2

Doyle, Elton, Resident Counsel, Associates Acceptance Co. Ltd.
Bill S-5 2:14-5

Equipment Lessors Association of Canada
Bill S-5, position 6:19-22

Federated Council of Sales Finance Companies
Bill S-5, submission 2:7, 17-8

Flynn, Hon. Jacques, Senator (Rougemont)
"(Les) Beaux Dimanches" 3:9-10, 13, 17-8
Bill C-5 9:8-11
Bill S-5 2:6-11, 13-5, 17-8; 8:6-7
Bill S-18 4:6-8

Forsey, Hon. Eugene A., Senator (Nepean)
Bill C-48 7:6-7, 9
Bill S-5 6:7-8

Fournier, Hon. Sarto, Senator (de Lanaudière)
"(Les) Beaux Dimanches" 3:5, 9, 18; 5:6

France
ORTF—CBC comparison 5:6

Graham, Hon. Bernard Alasdair, Senator (The Highlands)
Bill C-5 9:7-8
Bill S-5 2:18
Bill S-18 4:6

Grant, Stuart, Executive Officer, Civil Administration, Security, Transport Ministry
Bill S-34 11:6-15

Gutherie, A. D., Legal Adviser, RoyMarine Leasing Limited
Bill S-6
Discussion 6:7-15, 18, 21-2
Statement 6:6-7

Habitat Conference
See
United Nations Conference on Human Settlements

Haig, Hon. J. Campbell, Senator (River Heights), Committee Chairman
"(Les) Beaux Dimanches" 3:5, 7-8, 18-9
Bill C-5 9:6, 11
Bill C-48 7:6, 8, 10
Bill S-5 2:5, 9-11, 16-8
Bill S-11 1:6-9
Bill S-18 4:6-8
Bill S-34 11:6, 8-9, 12-3, 15

Hammarskjold, Knut, Director General, International Air Transport Association
Bill S-18
Discussion 4:6-7
Statement 4:6

Hijackings
See
Aircraft—Security measures

IATA
See
International Air Transport Association

ICAO
See
International Civil Aviation Organization

International Air Transport Association
Chartered Services
Air fares 4:7
Conference, updating suggestion 4:6
Percentage, number 4:6
Regulations 4:7
Supplemental, definition 4:6
Organization, background 4:6
Purpose 4:6-7
Security measures 11:12

International Air Transport Association, An Act respecting
See
Bill S-18

International Civil Aviation Organization
Canadian obligations 11:7
Function 4:6
International Security conventions
Chicago, Annex 17, signing 11:6-8, 11, 13
Ratification encouragement 11:6
Operational, engineering advice 4:6-7

Jiles, Peter, Vice-President and Secretary, United Dominion Corporations Canada Ltd.
Bill S-5 2:13, 17

Juneau, Pierre, Chairman, Canadian Radio-Television Commission
Television program examination, *Les Beaux Dimanches* 5:5-19

Justice Dept.
Bill S-5, constitutionality 6:20; 8:14-5

Kennerly, B. F., Counsel, Equipment Lessors Association of Canada
Bill S-5
Discussion 6:20-2, 24
Statement 6:19-20

Langdon, Glen, President, Equipment Lessors Association of Canada
Bill S-5 6:18-9

Langlois, Hon. Léopold, Senator (Grandville)
"(Les) Beaux Dimanches" 3:5-7, 9-11, 14-9; 5:5-10, 14-5, 18-9
Bill C-48 7:8-9
Bill S-5 6:6-8, 10-8, 20-4; 8:6-7

Lawson, Hon. Edward M., Senator (Vancouver)
Bill S-34 11:8, 11

Le Devoir
CBC, critical editorial 10:4-5

McElman, Hon. Charles, Senator (Nashwaak Valley)
"(Les) Beaux Dimanches" 5:16-7
Bill C-48 7:6
Bill S-5 6:13-4, 24; 8:6

Mackenzie, D. E., Vice-President, Secretary and General Counsel, Canadian Acceptance Corporation Ltd.
Bill S-5 2:11-8

Macnaughton, Hon. Alan, Senator (Sorel)
Bill S-18 4:7

Manitoba, Province
Deputy Attorney-General, Bill S-5, position 8:9

Miller, H. S., President, RoyMarine Leasing Limited
Bill S-5
Discussion 6:6, 8-15, 18
Statement 6:5-6

Ministry of Transport
See
Transport Ministry

Miville-Deschênes, G., Legal Adviser, Communications Dept.
Bill C-5 9:6

Molgat, Hon. Gildas, L., Senator (Ste. Rose)
Bill S-34 11:9, 11, 13-4

Molson, Hon. Hartland de M., Senator (Alma)
"(Les) Beaux Dimanches" 3:11-2, 17

National Transportation Act
Canadian Radio-television and Telecommunications Commission, enforcement 9:6
Provisions, Ministerial powers 7:8-9

New Brunswick, Province
Justice Minister, Bill S-5, position 8:10-1

Newfoundland, Province
Justice Minister, Bill S-5, position 8:12-3

Nova Scotia, Province
Attorney General, Bill S-5, position 8:10

Olympic Games (1976)
Aircraft security measures 11:8-10, 14

Ontario, Province
Deputy Attorney General, Bill S-5, position 8:13-4

Ontario Personal Property Security Act
Aircraft, recorded owners, documentation 2:12

Picard, Laurent, President, Canadian Broadcasting Corporation
Television program examination, *Les Beaux Dimanches* 3:6, 8-9

Prince Edward Island, Province
Bill S-5, position 6:23; 8:13

Provinces
Aircraft, lien registration 2:9, 11
Canadian Radio-television and Telecommunications Commission, membership participation 8:10
Railway costs, information requests 7:6-9
See also
Individual Provinces

Provincial Corporate Securities Registration Act
Bill S-5, relationship 2:13
Definition 2:13

Prowse, Hon. J. Harper, Senator (Edmonton)
Bill S-5 6:6-8, 10-8, 20-1, 23-4

Quebec, Province
Aircraft
Floating charges, liens 2:7, 9
Registration system, seizures
Bill S-5, consultation request 6:12, 23; 8:7, 10
Procedure 2:6, 10-1; 6:8, 11, 19, 21-2; 8:7
Cablevision application dispute 9:9

Railway Act
Canadian Radio-television and Telecommunications Commission, application provisions 9:6
Shareholder records 7:8

Railway Act, An Act to amend
See
Bill C-48

Railways
Costs
Computation 7:7
Information gathering 7:6-10

National Transportation Act non-compliance, sanctions 7:8-9
Shareholders lists, request 7:8-9
Subsidy payments 7:9-10

Reports to Senate
Bill C-5, without amendment 9:5
Bill C-48, without amendment 7:5
Bill S-5, without amendment 8:5
Bill S-18, without amendment 4:5
Bill S-34, without amendment 11:5
Les Beaux Dimanches television program examination 10:4-6

Riley, Hon. Daniel, Senator (Saint John)
Bill S-5 2:5-18; 8:6, 8
Bill S-34 11:10-2, 15

Robichaud, Hon. Louis J., Senator (L'Acadie-Acadia)
"*(Les) Beaux Dimanches*" 3:12, 14-5, 18

Royal Canadian Mounted Police
Aircraft, airport security, responsibility 11:8, 10-2, 14-5

RoyMarine Leasing Limited
Bill S-5
Position 6:5-15
Prior consultation 6:13-4

Saskatchewan, Province
Attorney General, Bill S-5, position 8:11

Shields, L., Counsel, Air Administration, Transport Ministry
Bill S-34 11:7-14

Shields, L., Solicitor, Legal Branch, Transport Ministry
Bill S-5 2:5-9

Smith, Hon. Donald, Senator (Queens-Shelburne)
"*(Les) Beaux Dimanches*" 3:7
Bill C-48 7:6, 8
Bill S-11 1:8-9
Bill S-34 11:9, 12

Soucy, Yvon, Railway Systems Officer, Transport Ministry
Bill C-48
Discussion 7:6-10
Statement 7:6

Sparrow, Hon. Herbert O., Senator (The Battlefords)
Bill S-34 11:7

Thomka-Gazdik, J. G., General Counsel, International Air Transport Assoc.
Bill S-18 4:7

Thompson, Hon. Andrew, Senator (Dovercourt)
"*(Les) Beaux Dimanches*" 5:14-5, 19
Bill S-34 11:6, 8, 11-4

Transport and Communications Standing Senate Committee
Bill S-5
Recommendations 8:4-6
Steering Committee report 8:6-8
Hopkins, E. Russell, Law Clerk and Parliamentary Counsel, procedure 2:6-8, 11, 17; 3:5; 4:7; 6:8
Motion-Refer subject-matter, Bill S-5, to Steering Committee . . . to determine further action 6:4, 23-4
Organization meeting 1:4
Procedure 3:5; 6:8, 22-4

Transport Ministry
Aircraft security
Costs 11:14
Study, international airports 11:14-5
Bill S-5
Committee briefs, comments 8:15-6
Consultation
Private firms 6:13-4
Provinces 2:6, 8-9, 11, 17; 6:7, 12, 21; 8:5-7, 9-16
Information control, railway costs 7:6-10

United Nations Conference on Human Settlements
Aircraft security measures, Vancouver 11:8, 11-2

United States
Aircraft security measures, legislation 11:7, 11, 13-4

Viets, R. D., Legal Branch, Consumer and Corporate Affairs Dept.
Bill S-11 1:8-9

Walker, P. S., Superintendent, Civil Aviation Regulations and Licensing Section, Transport Ministry
Bill S-5 2:9

Western Economic Opportunities Conference
Federal commitments, 1973 7:6, 8

Appendix
Issue 8
A—Aircraft Registry Bill, Correspondence Exchanged, Committee, Provincial Attorneys General, Federal Departments 8:9-16

Witnesses
—Bellevue, G. A., Canadian Bankers' Association
—Blair, D. Gordon, Counsel, International Air Transport Association
—Bluteau, André, Director, Legal Services Branch, Communications Dept.
—Buchan, R. J., Special Policy Adviser to Deputy Minister, Communications Dept.
—Butler, Michael, Counsel, British Columbia Telephone Company
—Carlile, J. C., Vice-President, Administration, British Columbia Telephone Co.
—Coolican, C. C., Canadian Bankers' Association
—Cowie, C. A., Inspector, Civil Aviation Regulations and Licensing Section, Transport Ministry
—David, Raymond, Vice-President, General Manager, French Services Division, Canadian Broadcasting Corporation

—Doyle, Elton, Resident Counsel, Associates Acceptance Co. Ltd.
—Grant, Stuart, Executive Officer, Civil Administration, Security, Transport Ministry
—Gutherie, A. D., Legal Adviser, RoyMarine Leasing Limited
—Hammarskjold, Knut, Director General, International Air Transport Association
—Jiles, Peter, Vice-President and Secretary, United Dominion Corporations Canada Ltd.
—Juneau, Pierre, Chairman, Canadian Radio-Television Commission
—Kennerly, B. F., Counsel, Equipment Lessors Association of Canada
—Langdon, Glen, President, Equipment Lessors Association of Canada
—MacKenzie, D. E., Vice-President, Secretary and General Counsel, Canadian Acceptance Corp. Ltd.
—Miller, H. S., President, RoyMarine Leasing Limited
—Miville-Deschênes, G., Legal Adviser, Communications Dept.
—Picard, Laurent, President, Canadian Broadcasting Corporation
—Shields, L., Counsel, Air Administration, Transport Ministry
—Shields, L., Solicitor, Legal Branch, Transport Ministry
—Soucy, Y., Railway Systems Officer, Transport Ministry
—Thomka-Gazdik, J. G., General Counsel, International Air Transport Assoc.
—Viets, R. D., Legal Branch, Consumer and Corporate Affairs Dept.
—Walker, P. S., Superintendent, Civil Aviation Regulations and Licensing Section, Transport Ministry
For pagination, *see* Index by alphabetical order.

Published under authority of the Senate by the Queen's Printer for Canada

Available from Printing and Publishing, Supply and Services Canada, Ottawa, Canada K1A 0S9

Government
Publications

BINDING SECT. NOV 30 1979

Government
Publications